
United States
Circuit Court of Appeals
For the Ninth Circuit.

WORTHEN LUMBER MILLS, a Corporation,
Appellant,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,
a Corporation,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the District of Alaska, Division No. 1.

Filed

SEP 1 6 1915

F. D. Monckton,
Clerk.

United States
Circuit Court of Appeals
For the Ninth Circuit.

WORTHEN LUMBER MILLS, a Corporation,
Appellant,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,
a Corporation,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the District of Alaska, Division No. 1.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Answer	27
Assignment of Errors	249
Attorneys, Names and Addresses of	1
Bill of Exceptions	73
Bond on Appeal	258
Certificate of Clerk U. S. District Court to Transcript of Record	264
Citation	261
Complaint	1
Conclusions of Law, Requested by Defendant . . .	208
Decision, Memorandum	54
Decree	52
Deed—Alaska Juneau Company's Exhibit "A-1"	240
Deed—Alaska Juneau Company's Exhibit "N-1"	246
Deed—Alaska Juneau Company's Exhibit "V".	229
Deed—Alaska Juneau Company's Exhibit "X"	231
Deed—Alaska Juneau Company's Exhibit "Z"	237
Deed—Worthen L. M. No. 3	210
Exceptions, Bill of	73
Exceptions to Certain Findings and to Conclusions of Law, etc	209

Index.	Page
EXHIBITS:	
Alaska Juneau Company's Exhibit "A-1"	
—Deed.....	240
Alaska Juneau Company's Exhibit "K-1"	
—Notice of Amended Location.....	244
Alaska Juneau Company's Exhibit "N-1"	
—Deed.....	246
Alaska Juneau Company's Exhibit "T"—	
Notice of Location.....	228
Alaska Juneau Company's Exhibit "V"—	
Deed.....	229
Alaska Juneau Company's Exhibit "X"—	
Deed.....	231
Alaska Juneau Company's Exhibit "Y"—	
Map... ..	236
Alaska Juneau Company's Exhibit "Z"—	
Deed.....	237
Exhibit—Diagram.....	25
Plaintiff's Exhibit "H-1"—Notice of Loca-	
tion.....	242
Worthen, L. M. Exhibit No. 3—Deed.....	210
Worthen Lumber Mills Exhibit No. 4—	
Photograph.....	214
Worthen Lumber Mills Exhibit No. 5—	
Photograph.....	215
Worthen Lumber Mills Exhibit No. 6—	
Photograph.....	216
Worthen Lumber Mills Exhibit No. 7—Plat	
of Mineral Survey No. 982, A and B...	217
Worthen Lumber Mills Exhibit No. 8—Map	
Worthen Lumber Mills Property.....	218

EXHIBITS—Continued:

Worthen L. M. Exhibit No. 9—Ordinance No. 87.....	219
Worthen Lumber Mills Exhibit No. 10— Plan.....	222
Worthen Lumber Mills Exhibit No. 11— Photograph.....	223
Worthen Lumber Mills Exhibit No. 12— Photograph.....	224
Worthen Lumber Mills Exhibit No. 13— Photograph.....	225
Worthen Lumber Mills Exhibit No. 14— Photograph.....	226
Worthen Lumber Mills Exhibit No. 15— Photograph	227
Findings of Fact and Conclusions of Law.....	43
Findings of Fact, Requested by Defendant.....	206
Index of Exhibits.....	73
Map—Alaska Juneau Company's Exhibit "Y".	236
Map—Worthen Lumber Mills Property—Wor- then Lumber Mills Exhibit No. 8.....	218
Memorandum Opinion.....	54
Names and Addresses of Attorneys.....	1
Notice of Amended Location—Alaska Juneau Company's Exhibit "K-1".....	244
Notice of Location—Alaska Juneau Company's Exhibit "T".....	228
Notice of Location—Plaintiff's Exhibit "H-1"	242
Opinion, Memorandum.....	54
Order.....	257
Order Settling and Allowing Bill of Exceptions.	248

Index.	Page
Ordinance No. 87—Worthen L. M. Exhibit No. 9	219
Petition for Appeal, Order Allowing Same and Fixing Amount of Bond for Costs.....	256
Photograph—Worthen Lumber Mills No. 4.....	214
Photograph—Worthen Lumber Mills Exhibit No. 5.....	215
Photograph—Worthen Lumber Mills Exhibit No. 6	216
Photograph No. 11—Worthen Lumber Mills Ex- hibit No. 11.....	223
Photograph—Worthen Lumber Mills Exhibit No. 12.....	224
Photograph—Worthen Lumber Mills Exhibit No. 13.....	225
Photograph—Worthen Lumber Mills Exhibit No. 14.....	226
Photograph—Worthen Lumber Mills Exhibit No 15.....	227
Plan—Worthen Lumber Mills Exhibit No. 10...	222
Plat of Mineral Survey No. 982, A and B—Wor- then Lumber Mills Exhibit No. 7.....	217
Praecipe for Transcript of Record.....	262
Reply.....	35
TESTIMONY ON BEHALF OF PLAINTIFF:	
BRADLEY, P. R.....	138
Cross-examination	150
Cross-examination	151
Redirect Examination.....	157
Recalled.....	178
Cross-examination	178

	Index.	Page
TESTIMONY ON BEHALF OF PLAIN-		
TIFP—Continued:		
Redirect Examination.....		180
Recross-examination.....		180
In Surrebuttal		202
JOHNSON, FANNIE.....		133
Cross-examination ...		135
JOHNSON, JIMMIE.....		129
JOHNSON, ST. CLAIR.....		112
Cross-examination... ..		118
JOHNSON, TOM.....		124
Cross-examination... ..		127
LENORE, F. H.....		161
Cross-examination... ..		164
LINDSAY, W. R.....		170
Cross-examination... ..		175
RECK, JOHN.....		166
Cross-examination... ..		168
WAYLAND, R. G.....		175
TESTIMONY ON BEHALF OF DEFEND-		
ANTS:		
BELL, J. H.....		190
Cross-examination.....		191
COLEMAN, GRAFTON.....		109
Cross-examination.....		111
JAEGER, E. R. (in Rebuttal).....		187
PETTIT, E. W. (in Rebuttal).....		181
WEBSTER, EDWARD.....		81
Cross-examination.....		84
Recalled.....		107

TESTIMONY ON BEHALF OF DEFEND-
ANTS—Continued:

WILHELM, VICTOR.....	76
WORTHEN, H. S.....	88
Cross-examination.....	101
In Rebuttal.....	193
Cross-examination.....	200

[Names and Addresses of Attorneys.]

JOHN RUSTGARD, Juneau, Alaska,

Attorney for Appellant.

Messrs. HELLENTHAL AND HELLENTHAL,
Juneau, Alaska,

Attorneys for Appellee.

*In the District Court for the Territory of Alaska,
Division No. 1, at Juneau.*

Case No. 1020—A.

ALASKA JUNEAU GOLD MINING COMPANY,
a Corporation,

Plaintiff,

vs.

WORTHEN LUMBER MILLS, a Corporation.

Defendant.

Complaint.

The plaintiff complains of the defendant and alleges:

I.

That the Alaska Juneau Gold Mining Company is a corporation duly organized under the laws of the State of West Virginia, and doing business in the Territory of Alaska, pursuant to a full compliance with the laws of said Territory.

II.

That the Worthen Lumber Mills is a corporation organized under the laws of the State of Washington, and doing business in the Territory of Alaska.

III.

That on and prior to the 15th day of September, 1902, the J. P. Jorgenson Company, a corporation, John Reck, W. W. Casey and W. J. Hills, were the owners in common, each owning an undivided one-fourth interest therein, of two certain lode mining claims, known as the Abe Lincoln and General Grant lode mining claims, which said mining claims were situate, lying, and being on the shore of Gastineau Channel to the south of the patented townsite of the town of Juneau, in the Territory of Alaska, and [1*] are more particularly described in the notices and certificates of location of each of said mining claims which are duly recorded in the office of the recorder for the Juneau Recording District, the same being the territory in which said claims were located, and reference is hereby made to said notices and certificates of location so recorded for a more detailed and perfect description.

IV.

That said two claims, to wit, the Abe Lincoln and General Grant lode mining claims adjoined one another and were grouped and held in common as aforesaid on the date above referred to.

That on the said 15th day of September, 1902, John Reck, W. W. Casey and W. J. Hills, made, executed and delivered to the J. P. Jorgenson Company their certain deed of writing, which said deed was then and there accepted by the said J. P. Jorgenson Company, and the said J. P. Jorgenson Company went into the possession and occupation of the prem-

*Page-number appearing at foot of page of original certified Record.

ises granted thereunder, which said deed is in words and figures as follows: [2]

“This Indenture, made this 15th day of September, in the year of our Lord one thousand nine hundred and two,

Between W. G. Hills, John Reck and W. W. Casey, all of Juneau, Alaska, the parties of the first part, and the J. P. Jorgenson Co. the party of the second part;

Witnesseth: That the said parties of the first part for and in consideration of the sum of One Dollar lawful money of the United States of America, to them in hand paid by the said party of the second part the receipt whereof is hereby acknowledged, do by these presents, remise, release and forever quitclaim unto the said party of the second part, and to its heirs and assigns all of our right, title and interest in the following described tract, lot or parcel of tide land situated lying and being on Gastineau Channel about 550 feet in a southerly direction from Cor. No. 1 of the Townsite of Juneau in the District of Alaska, particularly bounded and described as follows, to wit:

Beginning at a point at mean high tide 555 feet in a southerly direction from Cor. No. 1 of the townsite of Juneau, Alaska, thence running in a southerly direction along the mean high tide line of Gastineau Channel a distance of 1000 feet, and extending from the said line of mean high tide, to deep water of Gastineau Channel, reserving to said parties of the first part the right of ingress and egress across the dock or roadway of the party of the second part for the

landing of supplies and machinery and *of* for the dumping of refuse from mines on the abutting upland.

Together with all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold all and singular the said premises together with the appurtenances unto the said party of the second part and to its successors and assigns forever.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

W. J. HILLS. (Seal)

JOHN RECK. (Seal)

W. W. CASEY. (Seal)

Signed, sealed and delivered in the presence of

T. R. LYONS.

H. E. WEST.

United States of America,
District of Alaska,—ss.

This certifies that on the 15th day of September, A. D. 1902, before me the undersigned a Notary Public [3] in and for the District of Alaska, duly commissioned and sworn, personally came W. J. Hills, John Reck and W. W. Casey to me known to be the individuals described in and who executed the within instrument, and acknowledged to me that they signed and sealed the same as their free and volun-

tary act and deed, for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year in this certificate first above written.

[Seal]

T. R. LYONS,

Notary Public in and for the District of Alaska.

Filed for Record at 2:35 P. M. Sept. 27, 1902.

HIRAM H. FOLSOM,

Recorder.

United States of America,

Territory of Alaska,—ss.

I hereby certify that the foregoing is a true, full, correct and complete copy of the original instrument as the same appears of record in the office of the United States Commissioner, Ex-officio Recorder for the Juneau Recording Precinct, Alaska, in Book 18A of Deeds at page 570.

Witness my hand and official seal this — day of —, 1913.

_____ ,

United States Commissioner and Ex-Officio Recorder for Juneau Recording Precinct. [4]

V.

And that on said 15th day of September, 1902, the said J. P. Jorgenson Company, a corporation, conveyed to W. J. Hills by its certain deed, an undivided one fourth interest to the said Abe Lincoln and General Grant lode mining claims, reserving to itself a certain strip of tide-land 1000 feet long, as referred to in said deed, which said deed so made by the said J. P. Jorgenson to the said W. J. Hills, is in words and figures as follows, to wit: [5]

This Indenture made this 15th day of September, in the year of our Lord one thousand nine hundred and two,

Between the J. P. Jorgenson Company, a corporation, the party of the first part, and W. J. Hills, the party of the second part, Witnesseth: That the said party of the first part for and in consideration of the sum of One Dollar, lawful money of the United States of America, to it in hand paid by the said party of the said party of the second part, the receipt whereof is hereby acknowledged doth by these presents remise, release and forever quitclaim unto the said party of the second part, and to his heirs and assigns the following described tracts, lots, or parcels of land, situate, lying and being *to* the District of Alaska, particularly bounded and described as follows, to wit:

The undivided one fourth ($\frac{1}{4}$) interest of the party of the first part in and to those certain lode mining claims known and called the Abe Lincoln and General Grant, situate immediately adjoining the town of Juneau, in a southerly direction saving and excepting the land below mean high tide commencing 555.8 feet south of the southerly corner of the town of Juneau on Gastineau Channel and extending 1000 feet in a southerly direction along said Gastineau Channel, however granting to the party of the 2nd part ingress and egress and the right to dump refuse under 1st parties dock and a right across the same.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining and the reversion

and reversions, remainder and remainders, rents, issues and profits thereof. To Have and to Hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to his heirs and assigns forever.

In Witness Whereof the said party of the first part hath caused these presents to be signed by its president and secretary and its corporate seal to be hereto affixed the day and year first above written.

The J. P. JORGENSEN CO., (Seal]

By J. P. JORGENSEN, Pres.

The J. P. JORGENSEN CO., (Seal)

By H. E. WEST, Sec'y.

Signed, sealed and delivered in presence of

T. R. LYONS,

JOHN S. SNYDER,

United States of America,

Territory of Alaska,—ss.

This is to certify, that on this 15th day of September, A. D. 1902, before me, the undersigned a [6] Notary Public in and for the District of Alaska, duly commissioned and sworn, personally came J. P. Jorgenson and H. E. West to me known to be the president and secretary respectively of the J. P. Jorgenson Company, the corporation that executed the within instrument, and acknowledged to me that they executed said instrument for and in behalf of said corporation, and as the act and deed of such corporation.

Witness my hand and official seal, the day and year in this certificate first above written.

[Seal]

T. R. LYONS,

Notary Public in and for the District of Alaska.

Filed for record at 1:30 P. M. Oct. 4th, 1902.

HIRAM H. FOLSOM,

Recorder. [7]

VI.

That by reason of the deeds above referred to, the said J. P. Jorgenson Company, a corporation, estopped itself from disputing the title of the said W. J. Hills, John Reck and W. W. Casey to the above and foregoing Abe Lincoln and General Grant lode mining claims, except as to the 1000 feet of tide-flat conveyed to the said J. P. Jorgenson Company, and reserved to it in its said deed, subject to certain limitations, easements and reservations in said deeds mentioned.

VII.

That on October 23, 1905, W. J. Hills, had by mesne conveyance acquired an undivided three-fourths interest in said Abe Lincoln and General Grant lode mining claims, and did on said date convey said undivided three-fourths interest in said claims to Shattuck and Company, a corporation, and that by deed made on December 26, 1905, said Shattuck and Company did by its deed convey all of its said interest so acquired from said W. J. Hills as well as any other interest it might have at that time in said property to Henry Shattuck.

VIII.

That thereafter on May 1, 1906, the said Henry

Shattuck and Marie Charon Shattuck, his wife, conveyed an undivided one-fourth interest to John Beck in and to said Abe Lincoln and General Grant lode mining claims.

IX.

That thereafter and on the 23d day of August, 1911, the aforesaid John Beck conveyed to the Alaska Juneau Gold Mining Company, a corporation, the plaintiff herein, an undivided one-half interest in and to the said Abe Lincoln and General Grant lode mining claims. [8]

X.

That on or about the said 23d day of August, 1911, the aforesaid Henry Shattuck did by deed convey to the Alaska Juneau Gold Mining Company, the plaintiff herein, all his right, title and interest in and to the above-described General Grant lode mining claim, consisting of an undivided one-half interest in and to said lode mining claims.

XI.

That on October 31, 1912, the said Henry Shattuck conveyed to the said Alaska Juneau Gold Mining Company, a corporation, the plaintiff herein, all his right, title and interest consisting of an undivided one-half interest in and to the Abe Lincoln lode mining claim, except that the said Henry Shattuck reserved in said deed of conveyance certain rights in what is known as the Shattuck Wharf, situate in front of said Abe Lincoln mining claim, which said reservations are not material to this controversy and are therefore not specifically set forth.

XII.

That the name of the said J. P. Jorgenson Company was changed to the Alaska Supply Company, and that at the time of the conveyances above referred to by Henry Shattuck to the plaintiff herein, said Henry Shattuck owned approximately one-half of the stock of the said Alaska Supply Company and was president and manager thereof.

XIII.

That thereafter and after the said conveyances were made to the said plaintiff company by the said Henry Shattuck and the said John Reck, the defendant, the Worthen Lumber Mills, became the successor in interest of the J. P. Jorgenson Company. [9]

XIV.

That at the time the property rights of the said J. P. Jorgenson Company were conveyed to the said Worthen Lumber Mills all of the deeds of conveyance and other instruments of title above referred to were all recorded in the office of the Recorder for the Juneau Recording District, and the said Worthen Lumber Mills had a full and complete notice thereof; and further, the Worthen Lumber Mills had actual knowledge of the relation between Henry Shattuck and the Alaska Supply Company and the connection of the said Henry Shattuck with said company.

XV.

That by reason of the matters and things above set out the said Worthen Lumber Mills are estopped from claiming any right, title and interest in and to the General Grant and Abe Lincoln lode mining claims, save and except as the 1000 feet of the tide-

lands lying in front of said claims originally granted to the J. P. Jorgenson Company, subject to the reservations expressed and referred to in the deed above described and set forth.

XVI.

That the said Abe Lincoln and General Grant lode mining claims lie on the shore of Gastineau Channel, a navigable body of water, and as such shore lands had and have appurtenant thereto all the littoral rights possessed by lands lying on the shores of navigable waters. [10]

XVII.

That the plaintiff herein, the Alaska Juneau Gold Mining Company, is now the owner and holder of said Abe Lincoln and General Grant lode mining claims, under and by virtue of the conveyances above referred to.

XVIII.

That the plaintiff, the Alaska Juneau Gold Mining Company, is now the owner and holder and in the possession of a certain group of millsites, situate on the shore of Gastineau Channel and covering approximately the same ground embraced within the limits of the Abe Lincoln and General Grant lode mining claim above described; which said millsites are known as: "A" millsite; "B" millsite; "C" millsite; "D" millsite; "E" millsite; "F" millsite; "G" millsite; "H" millsite; "L" millsite; "T" millsite; "P" millsite; "M" millsite; "U" millsite; "X" millsite; and "Z" millsite; and are more particularly described in the notices of location of said millsites, which have been duly recorded in the office of the

Recorder for the Juneau Recording District, Territory of Alaska, and such notices are to be regarded as incorporated herein and set out in full for the purpose of a more accurate and complete description of said millsites; said group of millsites so owned and held by the plaintiff company borders on the shore of Gastineau Channel, a navigable arm of water, and as the owner of said group of millsites, the plaintiff company is entitled to all littoral and riparian rights appurtenant thereto, by reason of the fact that said millsites border upon the shore of Gastineau Channel as aforesaid. [11]

XIX.

That certain portions of the ground embraced within the Abe Lincoln and General Grant lode mining claims, and embraced within the boundaries of the millsites above referred to were occupied by Indians and others on the 17th day of May, 1884;

That all the right, title and interest of the Indians and others so occupying said ground has been purchased by the plaintiff company, which is now the owner and holder thereof;

That two tracts of ground so purchased from Indians in possession thereof on the 17th day of May, 1884, are material to this controversy and are as follows: One of said tracts was owned, claimed and occupied by the grantors and predecessors in interest of Jimmie Bean, prior to May 17, 1884, and is described as follows:

“Commencing at Cor. No. 1 of the Abe Lincoln lode mining claim U. S. Survey #597 which is identical with Cor. No. 4 of the General Grant

lode mining claim U. S. Survey #597, from which U. S. L. M. No. 1 bears S. $17^{\circ} 02'$ E. 6851.7 ft; thence S. $33^{\circ} 34'$ E. 106.5 ft; thence S. $45^{\circ} 31'$ E. 378.2 ft; thence N. $54^{\circ} 39'$ E. 150 ft; thence N. $39^{\circ} 43'$ W. 533.59 ft; thence S. $58^{\circ} 51'$ W. 150 ft; thence S. $31^{\circ} 09'$ E. 138 ft; to point of beginning."

This tract is known as the cemetery tract.

Which said tract of ground so described and occupied as aforesaid and the whole thereof was claimed, occupied and used by the said Jimmie Bean, his grantors and predecessors in interest, and the beach lying in front thereof was used by him, his grantors and predecessors in interest and others with his consent for the purpose of landing canoes and other water craft in going to and from said tract of ground, all of which use and occupation dates back to May 17, 1884; [12]

That on the 30th day of April, A. D. 1913, the said Jimmie Bean acting as an individual and as chief of the Taku Tribe of Natives, and Mrs. Sallie Bean, formerly the wife of Chief Johnson, upon a good and sufficient consideration of \$400.00 to them in hand paid did by deed of conveyance convey to the plaintiff company all of said tract and the whole thereof so described and occupied by them together with the right of ingress and egress to and from deep water, and all and singular the appurtenances and littoral rights thereunto belonging.

XX.

That the said Alaska Juneau Gold Mining Company, a corporation, the plaintiff herein, is now the

owner and holder of said tract.

XXI.

That an Indian by the name of Johnson occupied, possessed and claimed a certain tract of land described and situated on the shore of Gastineau Channel and within the boundaries of what is above described as the Abe Lincoln and General Grant group of mining claims, and is more particularly described as follows, to wit:

“Commencing at a point on the meander line of Gastineau Channel from which Cor. No. 6 of the General Grant lode, W. S. Survey No. 597, as surveyed for patent, bears N. 20° 26' W. 9.8 ft. thence N. 57° 7' E. 108 ft; thence N. 20° 26' W. 10.4 ft; thence N. 45° 31' W. 79.3 ft; thence S. 54° 39' W. 106.7 ft. to mean high tide line of Gastineau Channel; thence S. 45° 31' E. 74.5 ft. to said Cor. No. 6 General Grant lode; thence S. 20° 26' E. 9.8 ft. to place of beginning.

Together with the right of ingress and egress to and from deep water and the littoral rights.”

That said tract and the whole thereof was occupied, possessed and claimed by the said Indian named Johnson on the 17th day of May, 1884, and prior thereto. [13]

That said tract so described borders on the shore of Gastineau Channel, a navigable body of water, to the extent delineated upon the map hereto attached; and that the tide-lands lying in front of said tract of land and the whole and every part thereof were used by said Indian named Johnson claimed and occupied by him on the 17th day of May, 1884, for the

purpose of furnishing him ingress and egress to and from his said upland and for the purpose of landing canoes and other water craft thereon;

That for and in consideration of the sum of \$710.00, the plaintiff, the Alaska Juneau Gold Mining Company, acquired and became possessed of by mesne conveyance all the right, title and interest of the said Indian named Johnson in and to the tract of ground above described, as well as the tide-lands lying in front thereof and claimed and occupied as above set forth.

XXII.

That the said Alaska Juneau Gold Mining Company, a corporation, the plaintiff herein, is now the owner and holder of said tract of ground above described as having been occupied by the said Johnson, an Indian, and claimed by him as well as the littoral rights appertenant thereto. [14]

XXIII.

That the plaintiff, the Alaska Juneau Gold Mining Company, is engaged in the business of mining; is the owner of a large group of quartz claims both patented and unpatented situate in and near Silver Bos Basin a short distance from the town of Juneau, Alaska;

That said group of claims contains large low-grade ore bodies; that owing to the low-grade character of the ores the same cannot be mined and milled at a profit unless the operations be carried on on a large scale and a milling plant be situated on salt water so as to be able to carry on operations the year round and enjoy the other advantages that arise from hav-

ing the plant situated on a navigable body of water.

That the plaintiff company has for some time past been working on a plan of operation which involves the construction of a large milling plant having a capacity of approximately 12,000 tons per day, which plant is to be constructed on the premises above described, as included within said Abe Lincoln and General Grant lode claims, said millsites and the said tracts purchased from Indians and others.

That in order to carry out its said plan of operation it has driven approximately two miles of tunnel to connect its said milling plant with its said mines at an expense of approximately one half million dollars; which said tunnel has been connected by means of trestles and other contrivances so as to furnish a route for the conveyance of ores from its said mines to its said proposed milling plant, and for the purpose of conveying water to be used for water-power and other uses in connection with the operation of its said plant; [15]

That in order to carry out its said plan it has taken possession of all and singular the ground included within the Abe Lincoln and General Grant lode mining claims, said millsites, said Indian tracts, and has spent large sums in excavating thereon and in making preparations for the construction of said milling plant; all of which said work is now being actively carried on on the whole of and every part of said tract and tracts so occupied and possessed by the plaintiff company;

That it has already constructed a large wharf for the purpose of landing, milling and mining supplies,

and will in the near future be obliged to construct other similar wharves for the purpose of conveniently land supplies, coal and fuel oil, for its power plant, which will be constructed at the point on the tract of land so occupied by it indicated on the plat hereto attached, the same being in part at least on and in the neighborhood of the tracts so above described as having been purchased from the Indians.

XXIV.

That the plaintiff company now is and for some time past has been actively engaged in filling in the tide-lands in front of the point where the said power plant is to be constructed, and that in order to successfully operate said power plant it is necessary that it have access to deep water for the purpose of landing its fuel oil and other supplies in connection with the operation of its said power plant, and also for the purpose of obtaining salt water for condensing purpose for use in connection with its said power plant, as well as for the purpose [16] of having a waste way from its water-wheel plant which will constitute part of its said power plant;

That the natural conditions that obtain on the ground above described as being occupied and used by the plaintiff company for millsite purposes as above stated are such owing to snowslides, rock slides and other interferences that occur on certain portions thereof that the buildings including the mill buildings, power plant and other buildings can only be located at certain fixed points, to insure the safety of the plant; and that it is necessary because of such natural conditions that the plan adopted by the plain-

tiff company with reference to the construction of its buildings the location of the various portions of the plant be followed in detail;

That the tracts of ground above described as being included within the Abe Lincoln and General Grant group of mining claims, as being included within the group of millsites above referred to, and as being included within the Indian tracts above referred to, as well as the plan in connection with the construction of the milling plant above referred to are accurately delineated and set out upon the plat hereto attached and made a part hereof;

XXV.

That the J. P. Jorgenson Company constructed a sawmill upon the tide-flats conveyed to it by the plaintiff's grantors and reserved to it in its conveyance to the plaintiff's grantors of the Abe Lincoln and General Grant lode mining claims, the same being the tract of land extending for 1000 feet along the [17] shore of Gastneau Channel in front of said Abe Lincoln and General Grant lode mining claims, as shown upon the plat hereto attached, and as described in the deeds of conveyance herein set forth;

That by reason of said conveyance and reservation therein contained, the plaintiff's grantors reserved to themselves the right to dump tailings upon said 1000 feet of shore land and as well as the right of ingress and egress across the same as shown by the reservation contained in said deeds above referred to.

XXVI.

That the name of the said J. P. Jorgenson Com-

pany was afterward changed to the Alaska Supply Company, of which the said Henry Shattuck, as above referred to, was one of the principal stockholders as well as president and general manager;

That at the time the said Shattuck occupied such position with the said Alaska Supply Company, he made the conveyance to the plaintiff company, above referred to, and his interest in the said Abe Lincoln and General Grant mining claims upon the consideration above referred to, the total sum paid said Shattuck being \$2,500.00;

That said Alaska Supply Company continued to operate said sawmill and continued to use said 1000 feet for said sawmill purposes, a portion thereof being applied to the construction of the sawmill itself, a portion thereof for the purpose of constructing a wharf and the remainder for use as a log boom;
[18]

XXVII.

That on the 24th day of March, 1913, the defendant company became the successor in interest of the said Alaska Supply Company to said sawmill and plant including the right to occupy the said 1000 feet of shore land in front of said Abe Lincoln and General Grant lode mining claims;

That on the 28th day of June, 1913, while the plaintiff company was engaged in making excavations with a view of preparing the ground for the construction of its said milling plant on the ground occupied by it and above the strip occupied by the defendant company, being 1000 feet in extent as above stated, an action was commenced against the plaintiff com-

pany by the said defendant company with a view of enjoining it from permitting its waste material to escape on the beach in front of its said ground; that the Court issued a temporary injunction enjoining the plaintiff company from dumping solid material on its said ground pending action;

That thereafter, and on or about the 14th day of July, 1913, the said Worthen Lumber Mills commenced another and further action against the plaintiff, the Alaska Juneau Gold Mining Company, with a view of enjoining it from driving piles in front of its said above-described tract of ground owned and occupied by it for the uses and purposes aforesaid, which said piles were driven for the purpose of placing structures thereon for use in connection with its said operations as shown on the plat attached hereto; that the Court issued a restraining order in said action pending the time within which a hearing for a temporary injunction could be had, which has not yet been had. [19]

XXVIII.

That after said restraining orders had been issued and while the hands of the plaintiff company were tied by reason thereof, the defendant company did clandestinely and on Sunday, an unjudicial day, to wit, the 3d day of August, 1913, commence the construction of a long and narrow platform extending beyond and to the south of the 1000 feet strip of tideland owned and occupied by it under and by virtue of the conveyance and reservation above referred to, and in front of the ground claimed, owned and occupied by the plaintiff company as above set forth;

said platform as the same is being constructed has a width of approximately fifteen feet and extends for approximately 400 feet along the shore beyond the 1000 feet owned and occupied by the defendant company, and in front of the ground claimed, owned and occupied by the plaintiff company;

That said platform was commenced and was in course of construction while the plaintiff company was actually engaged in filling in the tide-flats in front of which and across which said platform is being constructed;

That immediately after the construction work of said platform was commenced the defendant company was notified of the fact that they were beyond their own lines and were constructing a platform in front of the plaintiff's ground and in such manner as to cut off the plaintiff's right of ingress and egress to and from deep water, and were told to discontinue work in connection therewith;

That notwithstanding the notice so given it, that notwithstanding the warning given it the defendant company continued [20] its said work and threatens to complete its said platform across said entire distance of about 400 feet and will complete the same unless prevented by an order of this Court;

And, further, that while the plaintiff was restrained and enjoined as above set forth the defendant company went in and upon the premises and wilfully destroyed and tore out piles having been previously placed there by the defendant company;

That said platform above described extends in front of and across the tract of ground on which the

power plant of the plaintiff company is being constructed as above referred to, and will if completed and permitted to remain in that position cut off the plaintiff's right of ingress and egress to deep water and prevent the plaintiff from landing coal oil and other supplies at that point in connection with its power plant, and also prevent the plaintiff from procuring salt water for use in connection with the operation of its power plant, and effectually prevent the plaintiff from having a waste way for its waste water from its power plant to Gastineau Channel;

That the maintenance and construction of said platform by the defendant company along the shore of Gastineau Channel at the point above referred to in the manner above referred to will destroy the

(As per
order of
Court Jan.
29-1915.)—
O. Z. D.
Dep. Clerk.

value of the plaintiff's property, will cut off plaintiff's access from its uplands above described to the navigable waters of Gastineau Channel for the entire distance that such platform extends along in front of the same, will render it impossible for the plaintiff company to maintain its power plant at said point which is the only practical point for the maintenance of the same, and will cause the plaintiff company irreparable damage and loss which cannot be [21] compensated in money, because of the fact that it will disarrange the plans of the plaintiff company, interfere with the construction of its milling plant to an extent that cannot be calculated, because of the physical conditions that obtain on the ground; will delay the plaintiff in getting its plant completed so as to enable it to mill its

ores and will actually interfere with the mining and milling of the ores of the plaintiff so as to deprive the plaintiff of profits that it would derive therefrom.

WHEREFORE the plaintiff prays:

That the rights of the respective parties herein be adjudicated by the Court and a decree be entered herein defining the rights of each;

That the Court issue a mandatory injunction commanding the defendant company to remove any and all structures placed and maintained by them in front of the ground occupied and used by the plaintiff and owned by it as aforesaid, except such portion as is included within the 1,000 feet of tide-lands granted to and reserved to the defendant company;

And that the Court issue a temporary restraining order enjoining the defendant from driving piles or constructing structures in front of the lands owned and occupied by the plaintiff as aforesaid, except the 1,000 feet above referred to and that said temporary restraining order be made permanent [22] upon the hearing of this cause, and for such other and further relief as to the Court may seem just and equitable.

HELLENTHAL & HELLENTHAL,
Attorneys for Plaintiff. [23]

United States of America,
Territory of Alaska,—ss.

R. A. Kenzie, being first duly sworn, on oath, says: That I am the General Supt. of the plaintiff corporation in the above-entitled action; that I have read the foregoing complaint and know the contents

thereof and believe the same to be true.

[Seal]

R. A. KINZIE.

Subscribed and sworn to before me this 5th day of August, A. D. 1913.

[Notarial Seal]

SIMON HELLENTHAL,

Notary Public for Alaska.

My Commission expires Nov. 29, 1913.

[Endorsed]: No. ——. In the District Court for the Territory of Alaska, Division No. 1. Alaska Juneau Gold Mining Company, a Corporation, Plaintiff, vs. Worthen Lumber Mills, a Corporation, Defendant. Complaint.

Due service by copy of the within admitted this 5th day of August, 1913.

SHACKLEFORD & BAYLESS,

Attorneys for Plaintiff,

Defendant. [24]



*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1020—A.

ALASKA JUNEAU GOLD MINING COMPANY,
a Corporation,

Plaintiff,

vs.

WORTHEN LUMBER MILLS, a Corporation,
Defendant.

Answer.

Comes now the defendant and for its answer to plaintiff's complaint herein shows to this Court:

I.

Defendant admits the allegations in paragraph I of plaintiff's complaint set out.

II.

Defendant admits that it is a corporation, as alleged in paragraph II of the complaint herein, and alleges that it has paid its annual license fee last due, under and pursuant to the provisions of Chapter 11 of the Territorial laws of Alaska for the year 1913.

III.

Defendant admits the various allegations set out in paragraphs III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, and XVII of the complaint, except as said allegations are hereinafter denied.

IV.

Defendant denies the allegations set out in para-

graph XVI of the complaint. [26]

V.

As to the allegations set out in paragraph XVIII of plaintiff's complaint defendant has not knowledge sufficient to form a belief, and therefore denies the same, and denies positively that by reason of such alleged millsites mentioned in said paragraph XVIII or otherwise plaintiff has, holds or is entitled to any littoral or riparian rights in or over the shores or waters of Gastineau Channel or over any of the premises now in the possession of defendant.

VI.

As to the allegations set out in paragraphs XIX, XX, XXI and XXII of the complaint, defendant has not knowledge sufficient to form a belief, and therefore denies the same, and denies positively that any of the tracts of land described in plaintiff's complaint and therein alleged to belong to it borders on Gastineau Channel or upon the tide waters thereof, and denies that, by reason of any ownership of such tracts of land, plaintiff has, holds or is entitled to any littoral rights in or over the waters of Gastineau Channel.

VII.

As to the allegations set out in paragraph XXIII of the complaint, defendant has not knowledge sufficient to form a belief, and therefore denies the same; and denies positively that plaintiff has taken possession of or placed any improvements upon the premises in the possession of defendant or hereinafter alleged to belong to or be in the possession of defendant, except that plaintiff has unlawfully and

in violation of the injunction issued in cause No. 1010-A in this court, sluiced silt and other debris over portions of such premises. [27]

VIII.

Defendant denies the allegations set out in paragraph XXIV of plaintiff's complaint, but admits that plaintiff has sluiced various silt and other debris over some of the premises in question, and avers that the same has been done unlawfully, without authority in law, and in violation of the injunction in cause No. 1010-A of this court.

IX.

Defendant denies the allegations set out in paragraph XXV of plaintiff's complaint, except that defendant admits that the J. P. Jorgenson Company constructed a sawmill upon the tide-flats conveyed to it by plaintiff's grantors and reserved to it in its conveyance to the plaintiff's grantors of the Abe Lincoln and General Grant lode mining claims, and alleges that part of said sawmill plant is situated on high land above mean high tide.

X.

Answering the allegations set out in paragraph XXVI of plaintiff's complaint, defendant admits the same, except to the extent that such allegations are denied or modified in other parts of this answer.

XI.

Answering the allegations in paragraph XXVII of the plaintiffs' complaint set out, the defendant admits the same, except to the extent that said allegations are denied or modified in other parts of this answer.

XII.

Answering the allegations set out in paragraphs XXVIII of plaintiff's complaint, defendant denies the same, except to the extent that such allegations are admitted or qualified in other parts of this answer. [28]

XIII.

For a further answer and defense *defense* defendant alleges that it is the owner of a sawmill plant situated within the town of Juneau, partly on upland and partly on land below mean high tide, on the northeasterly shore of Gastineau Channel, the greater portion of said sawmill plant being situated on the northerly portion of a tract of land extending from a point 701.31 feet southerly from corner No. 1 of the patented townsite of Juneau for a distance of 1300 feet southerly along the northeasterly shore of Gastineau Channel, that the southerly end of said tract for a distance of some 700 or 800 feet is used by defendant as and for a log boom or booming ground in connection with said sawmill and that it is absolutely indispensable to the enjoyment of its said property by defendant that the navigable waters of Gastineau Channel southerly from said sawmill plant and along the said northeast shore be kept open and free from obstruction in order that the defendant may be able to float its rafts of logs into said log boom; that the said sawmill plant has been in existence and been operated by defendant and its predecessor in interest some ten or twelve years last past; that a street and public highway and thoroughfare twenty feet wide, known as Franklin

Street also referred to as Lower Franklin, extends along the line of mean high tide on the northeast shore of Gastineau Channel past the premises described in plaintiff's complaint as the properties of said plaintiff; that said street has been duly, properly and lawfully laid out and established and has been used as a public highway for more than ten years last past, is now so used, and the said street intervenes between the navigable waters of Gastineau Channel and the various tracts of land claimed by plaintiff in its complaint. [29]

XIV.

That defendant herein and its predecessor in interest for several years last past have been, and defendant now is, in peaceable, lawful and exclusive possession of the strip of land adjoining said street on the southwest or seaward side thereof, which strip is approximately 25 feet wide and extends about 400 feet in a southerly direction from the southerly end of the said 1000-foot reserve referred to and known as the Jorgenson reservation; described in plaintiff's complaint; and that on the 28th day of June, 1913, the defendant herein, while in such possession, proceeded to lay a plank platform over said strip for the purpose of using the same as a storage place for lumber manufactured at said sawmill, and the said strip of ground and platform are necessary to defendant for such purpose.

XV.

That said strip of ground is a part of the navigable waters of Gastineau Channel; that no land or premises belonging to plaintiff or anyone else inter-

venes between said strip and said public street, and that plaintiff has no right, riparian, littoral or otherwise, in said premises, nor is plaintiff in any manner injured in any of its rights by reason of said occupancy of said premises by defendant.

XVI.

That in the execution of the deed, a copy of which is set out in paragraph IV of plaintiff's complaint, an error occurs, in this, that at the time the said deed was executed it was the purpose and the intent of all the parties to said deed to describe the premises therein conveyed as beginning at a point at mean high tide 707.31 feet in a southerly direction [30] from corner No. 1 of the townsite of Juneau, Alaska, but that, by mutual inadvertence and mistake, said point was described as situated 555 feet in a southerly direction from corner No. 1 of the townsite of Juneau; that said error in said deed was unknown to this defendant till the complaint herein was served upon it; but that the defendant and its predecessor in interest have ever since the execution of said deed been in actual occupancy and possession of the premises intended to be described, as the plaintiff at all times well knew; and the plaintiff at all times well knew that the defendant and its predecessor in interest claimed the ownership of said premises so occupied by them.

XVII.

That an error occurs in the deed, a copy of which is set out in paragraph V of plaintiff's complaint, in this, that at the time of the execution of said deed it was the purpose and intent of the parties to said

deed to describe the reservation in said deed as commencing at a point 701.31 feet southerly from corner No. 1 of the townsite of Juneau, but that, by mutual inadvertence and mistake, such point was described as situated 555.8 feet south of the southerly corner of the town of Juneau.

WHEREFORE, defendant prays that the plaintiff take nothing by this action; that the temporary restraining order heretofore granted in this cause be dissolved; that that certain deed, a copy of which is set out in paragraph IV of plaintiff's complaint, be reformed so that the premises conveyed by said deed be described as beginning at a point [31] at mean high tide 701.31 feet in a southerly direction from corner No. 1 of the townsite of Juneau, instead of at a point 555 feet in a southerly direction from said corner; that that certain deed, a copy of which is set out in paragraph V of plaintiff's complaint be so reformed that the reservation therein be described as commencing at a point 701.31 feet in a southerly direction from corner No. 1 of the townsite of Juneau, instead of at a point 555.8 feet south of the southerly corner of the town of Juneau; that defendant have its costs and disbursements herein.

JOHN RUSTGARD,
Attorney for Defendant. [32]

United States of America,
Territory of Alaska,—ss.

H. S. Worthen, being first duly sworn on oath, says: That he is the President of Worthen Lumber Mills, the defendant in the above-entitled action;

that he has read the foregoing Answer, knows the contents thereof, and believes the same to be true.

(Sgd.) H. S. WORTHEN.

Subscribed and sworn to before me this 12th day of Sept. 1914.

[Notarial Seal] (Sgd.) GUY McNAUGHTON,
Notary Public for the Territory of Alaska, Residing
at Juneau.

My commission expires on the 25th day of October, 1916.

Copy of within answer received and due service of same acknowledged this 14th day of September, 1914.

HELLENTHAL & HELLENTHAL,
Attorneys for Plaintiff.

Filed in the District Court, District of Alaska, First Division. Sept. 14, 1914. J. W. Bell, Clerk. By C. Z. Denny, Deputy. No. 1020-A. In the District Court, Division No. 1, Territory of Alaska. Alaska Juneau Gold Mining Company, a Corporation, vs. Worthen Lumber Mills, a Corporation, Defendant. Answer. John Rustgard, Attorney for Defendant. [33]

*In the District Court for the Territory of Alaska,
Division No. One, at Juneau.*

Case No. 1020-A.

ALASKA JUNEAU MINING COMPANY, a Cor-
poration,

Plaintiff,

vs.

WORTHEN LUMBER MILLS,

Defendant.

Reply.

Comes now the plaintiff and for reply to the defendant's answer herein, admits, denies and alleges as follows:

I.

Referring to paragraphs seven and eight of the defendant's answer, the plaintiff denies that the premises, or any part thereof, referred to in said paragraphs, or either of them, are, or ever were, in the possession of the defendant, or, are or ever were the property of the defendant. And further denies that it deposited silt, debris or anything else on said property in violation of any injunction as herein referred to or otherwise, except in the exercise of its lawful rights.

II.

Referring to paragraph nine of the defendant's answer, the plaintiff denies that any part of the sawmill plant, constructed by the J. P. Jorgenson Company, is situated on high land above the mean high tide.

III.

Referring to the allegations contained in paragraph thirteen of the defendant's answer, the plaintiff admits that [34] the defendant is the owner of and in the possession of a sawmill plant, situate on the tide-flats along the shore of Gastineau Channel, but denies that said sawmill plant occupies the premises referred to in said paragraph and designated as the premises occupied by it, or any part thereof, except as alleged in the complaint. In this connection the plaintiff avers that all the ground now occupied by said sawmill or log boom, or ever occupied by said sawmill or log boom, is embraced within the thousand-foot reservation described in the complaint herein, and that no part thereof extends to the south of or beyond the southerly end of a tract one thousand feet in extent, commencing at a point 555.8 feet southerly of the southerly corner of the townsite of Juneau.

IV.

Plaintiff further denies that it is absolutely indispensable, or at all indispensable, to the enjoyment of the property of the defendant by the defendant, that the navigable waters of Gastineau Channel southerly from said sawmill plant and along the northeast shore or otherwise, or at all, be kept open and free from obstruction in order that the defendant may be able to float its rafts of logs into said log boom or otherwise.

V.

The plaintiff further denies that a street or public highway, or either, or a thoroughfare twenty feet

wide, or any other kind of thoroughfare, known as Franklin Street, Lower Franklin, or any other street, extends along the line of mean high tide on the northeast shore of Gastineau Channel [35] past the premises of the plaintiff, described in the complaint as the property of the plaintiff. The plaintiff further denies that any such street has been duly, properly or lawfully laid out or established,

VI.

The plaintiff denies that any such street or thoroughfare has been used as a public thoroughfare for more than ten years last past, or at all, except as hereinafter expressly referred to, and also that the same is now so used, except as herein described.

VII.

The plaintiff also denies that said street or any street intervenes between the navigable waters of Gastineau Channel and the various tracts of land, or any of them, claimed by the plaintiff in its complaint. And in this connection the plaintiff further avers:

That during the summer of 1912, the City of Juneau constructed a plank driveway twenty feet wide over the tide-lands belonging to the plaintiff, and referred to in the plaintiff's complaint; that said driveway is not constructed along the line of mean high tide, but is constructed over the tide-flats a long distance to seaward from said line of mean high tide, and situated on piles driven and maintained for that purpose; that the construction and maintenance of said street by the city was unlawful and was done without any authority whatsoever from the plain-

tiff, and while the plaintiff was the owner of and in the possession of the uplands described [36] in the plaintiff's complaint, and further that said driveway as so constructed by the city does not cut the plaintiff's said land, or any part thereof, off from tide water, but is built a considerable distance to seaward and below the line of mean high tide and is so situated that the upper side of said street (referring to the side nearest the shore) is approximately from one hundred to one hundred fifty feet to seaward from the line of mean high tide. In this connection the plaintiff further avers that said driveway as built and maintained by the city is so built and maintained as not to interfere with the plaintiff in its exercise of its littoral rights and does not interfere with the plaintiff's access to deep water from its said uplands; that because of the fact that said driveway has always been so maintained as not to interfere with plaintiff's right in this behalf and so as not to prevent plaintiff from freely going over and across the same, or otherwise from exercising its right of ingress and egress to and from the navigable waters of Gastineau Channel, the plaintiff has had no right of action against the city to compel the removal of said street although the same was constructed without any license from the plaintiff or without any right to construct the same.

VIII.

Referring to the allegations contained in paragraph fourteen of defendant's answer, the plaintiff denies that the defendant now is, or ever has been, in the peaceful, lawful or exclusive possession, or

at all, of the strip of land adjoining the street therein referred to on the southwest or seaward side thereof, or at all, plaintiff denies that [37] defendant has been in possession of a strip twenty-five feet in width extending about four hundred feet in a southeasterly direction from the southerly end of the said thousand-foot reservation, referred to as the Jorgenson Reservation, or that it has been in possession of any part or parcel of any such strip, and denies that the defendant has been in possession of any tide-lands, uplands or other property situate to the south of the southerly end of said Jorgenson Reservation, and denies that the platform which the defendant sought to construct over and across the tide-lands of the plaintiff in such a manner as to cut off the plaintiff's access to and from deep water, is necessary to the defendant for the purpose stated, or for any purpose.

IX.

Referring to the allegations contained in paragraph sixteen of the defendant's answer, the plaintiff denies each and every allegation in said paragraph contained, and avers that the deed in said paragraph referred to was executed in accordance with, and expressed, the intention of the parties at the time, and that no mistake occurred therein, and further that the defendant is not entitled to have said deed corrected if a mistake occurred therein, because of the fact that such relief is and would be barred by reason of the defendant's laches, and by reason of the fact that more than ten years have elapsed between the time said deed was executed

and recorded and the time of the filing of the answer herein, and in this connection the plaintiff further alleges:

That it purchased the property described in said [38] deed from the parties and in the manner alleged in the complaint and that at that time it had no knowledge of any such mistake, if any such mistake had ever occurred; that said deed was recorded and is part of the records of the Juneau Recording District, and that relying upon the verity of said records and the correctness of said deed as so recorded, it did, without any notice of any mistake or error, purchase the property therein described and paid value therefor, and that in this regard the plaintiff is and was an innocent purchaser for value without notice.

That by reason of the fact that said deed was so kept upon the records by the defendant and allowed to remain there, and the further fact that the plaintiff, relying upon the correctness of said description as contained in said deed, bought said property in the manner alleged in the complaint without any knowledge of any defect or error in said description, the defendant is now estopped from urging any such errors against the plaintiff even though such error might have existed.

X.

Referring to the allegations contained in paragraph seventeen of the defendant's answer, the plaintiff denies each and every allegation in said paragraph contained, and avers that the deed in said paragraph referred to was executed in accordance

with, and expressed, the intention of the parties at the time, and that no mistake occurred therein, and further that the defendant is not entitled to have said deed corrected if a mistake occurred therein, because of the fact that such relief is and would be barred by [39] reason of the defendant's laches, and by reason of the fact that more than ten years have elapsed between the time said deed was executed and recorded and the time of the filing of the answer herein, and in this connection the plaintiff further alleges:

That it purchased the property described in said deed from the parties and in the manner alleged in the complaint and that at that time it had no knowledge of any such mistake, if any such mistake had ever occurred; that said deed was recorded and is part of the records of the Juneau Recording District, and that relying upon the verity of said records and the correctness of said deed as so recorded, it did, without any notice of any mistake or error, purchase the property therein described and paid value therefor, and that in this regard the plaintiff is and was an innocent purchaser for value without notice.

That by reason of the fact that said deed was so kept upon the records by the defendant and allowed to remain there, and the further fact that the plaintiff, relying upon the correctness of said description as contained in said deed, bought said property in the manner alleged in the complaint without any knowledge of any defect or error in said description, the defendant is now estopped from urging any such errors against the plaintiff even though such error

might have existed.

WHEREFORE, the plaintiff prays that the defendant be denied any of the relief sought, and that the plaintiff have the relief prayed for in its complaint, together with its costs and disbursements in this behalf incurred.

HELLENTHAL & HELLENTHAL,
Attorneys for Plaintiff. [40]

United States of America,
Territory of Alaska,—ss.

P. R. Bradley, being first duly sworn, on oath says: That I am the General Superintendent of the Alaska Juneau Gold Mining Company, plaintiff in the above-entitled action; that I have read the foregoing Reply and know the contents thereof and believe the same to be true.

P. R. BRADLEY.

Subscribed and sworn to before me this fourteenth day of April, A. D. 1915.

[Notarial Seal] SIMON HELLENTHAL,
Notary Public for Alaska.

My commission expires Nov. 30, 1917.

Due service by copy of the within admitted this 14th day of April, 1915.

JOHN RUSTGARD,
Attorney for Defendant.

[Endorsed]: No. 1020—A. In the District Court for the Territory of Alaska, Division No. 1. Alaska Juneau Gold Mining Company, Plaintiff, vs. Worthen Lumber Mills, Defendant. Reply. Filed in the District Court, District of Alaska, First Di-

vision. Apr. 15, 1915. J. W. Bell, Clerk. By C. Z. Denny, Deputy. [41]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 1020-A.

ALASKA JUNEAU GOLD MINING COMPANY,
a Corporation,

Plaintiff,

vs.

WORTHEN LUMBER MILLS, a Corporation,
Defendant.

Findings of Fact and Conclusions of Law.

This cause came on duly to be tried on the complaint as amended by interlineation, answer and reply, on the 15th day of April, 1915; plaintiff appeared by Messrs. Hellenthal and Hellenthal, its counsel, and defendant by Mr. John Rustard, its counsel. Evidence was introduced on behalf of both sides to the controversy, and said evidence having been concluded and the arguments of counsel having been heard, the Court took the matter under advisement and does now make from the evidence the following:

FINDINGS OF FACT.

I.

That at the time of the filing of the complaint herein, and of the doing of the things complained of in said complaint, both plaintiff and defendant were and now are corporations duly organized and au-

thorized to do business in the District of Alaska by virtue of having complied with all the laws of the said District.

II.

That on the 23d day of August, 1911, plaintiff became, and at all times since has been, the owner and in possession and entitled to the possession of those two mining claims, situated on [42] Gastineau Channel, a navigable arm of the North Pacific Ocean, near the city of Juneau, known as the Abe Lincoln and General Grant; said claims were and are the upland upon which abuts the tide-land involved in this litigation. That said tide-land is shoal water, lying immediately between said upland and the navigable waters of said Gastineau Channel.

III.

That at all of said times plaintiff was the owner and holder of and in possession of a certain group of millsites lying contiguous to each other and covering approximately the ground embraced within the limits of said lode mining claims, which said millsites were known as A, B, C, D, E, F, G, H, L, T, P, M, U, X and Z respectively; that millsites A and U above referred to immediately abut on the tide-land in dispute in this case.

IV.

That on and prior to May 17, 1884, and from that date continuously, the upland immediately abutting upon the tide-land in dispute herein was also claimed and occupied by Indians who claimed, occupied and used the same, together with the tide-land in front thereof, as a place of residence and as a place for

landing and hauling up of canoes and for other purposes; and that at the time of the doing of the things complained of in this suit plaintiff had acquired by purchase all of the right, title, interest and claim of the said Indians in and to said upland and said tide-land, and is now the owner of said rights.

V.

That the plaintiff is engaged in the business of mining; is the owner of a large group of quartz claims, both patented and unpatented, situate near Silver Bow Basin, a short distance from [43] the town of Juneau, Alaska.

That in connection with the operation of said mines, the plaintiff is building a large milling plant upon the premises embraced within the said Abe Lincoln and General Grant lode claims and said mill-sites and the tracts purchased, as aforesaid, from the said Indians; that in the work of constructing said milling plant and other work incident thereto, the plaintiff has already expended a sum in excess of one million dollars, and has raised a further sum of approximately four million dollars to be expended in that connection.

That in order to successfully carry on its said work of construction, it is necessary that plaintiff have access to the deep waters of Gastineau Channel and that wharves be built from the upland to said deep water for the purpose of facilitating said access and enabling it to land its construction material and convey the same to the point where said milling plant is being constructed, and that such access is also necessary for the purpose of supplying

its power plant, to be constructed on the shore at a point above the premises in dispute, with fuel oil and coal, and for other uses and purposes in connection with the operations of its said plant.

That the practical point for the construction of said wharf is at a point on the shore as near as possible to plaintiff's proposed milling plant and, that in order for plaintiff to avail itself of its right of access to deep water, it is necessary to build a wharf extending from the southerly end of what is herein elsewhere referred to as the "Jorgenson Reservation," thence southward along the shore until the present Alaska Juneau wharf is reached; that said wharf, when completed, would include the entire area marked on the plat attached hereto "Proposed Alaska Juneau Wharf," and that all of said area is reasonable and necessary to be used for the construction of such a wharf as an aid to the ingress and egress to and from said upland. [44]

VI.

That the Worthen Lumber Mills is the owner of a sawmill and sawmilling plant, occupying a space of ground one thousand feet in extent along the shore of Gastineau Channel in front of said Abe Lincoln and partially in front of said General Grant lode claims, the said tract being the tract reserved to the J. P. Jorgenson Company in the deed of conveyance made by said company to W. J. Hills, elsewhere referred to in these findings and commencing at a point 555.8 feet south of the southerly corner of the town of Juneau on Gastineau Channel and extending 1000

feet in a southerly direction along said Gastineau Channel.

VII.

That the position on the ground of the tide-flats and waterfront, concerning which the dispute in this case exists, is accurately shown on the following plat, which is incorporated in and made a part of this finding, and lies between what is shown on said plat as the southerly boundary of the thousand foot reservation and what is marked on said plat as "fish-house"; said plat also correctly shows the proposed Alaska Juneau wharf; the southerly boundary of the Jorgenson thousand foot reservation; the position of what is known as the "fish-house"; the General Grant and Abe Lincoln lode claims with reference to the disputed area; the Indian lots purchased by the plaintiff and referred to as the Jimmy Bean lot and also the Jimmy Johnson lot, as well as the position on the ground of the A Millsite and the U Millsite, both owned by the plaintiff; also correctly shows the line of mean high tide between the southerly end of the Jorgenson Reservation and the point opposite the fish-house; the plat also correctly [45] shows the plank roadway extending over the tide-flat between the said southerly end of the Jorgenson Reservation and the fish-house. [46]



VIII.

That on the 3d day of August, 1913, defendant was erecting a platform for the storage and piling of lumber, upon the said tide-land to the south of said Jorgenson 1000 foot reservation and continued so to do until temporarily enjoined by this Court in this action; that the platform then in the course of erection by the defendant would, if completed, cut off the ingress to and egress from the upland from and to the deep waters of Gastineau Channel, and said platform and the dolphins erected by defendant on the tide-land in question (which were used in connection with defendant's booming ground on the 1000 foot strip aforesaid) and the use as a log booming ground of the space of tide-land in front of said upland to the south of said 1000 foot reservation, do and would interfere with and obstruct such ingress and egress and prevent the building of the wharf aforesaid and thus cut off plaintiff's access to deep water; that the damage resulting therefrom to plaintiff would be such that it cannot be calculated in money, and owing to the continuous character of the trespass it would give rise to a multiplicity of suits; that the plaintiff has no plain, speedy or adequate remedy at law.

IX.

The Court further finds that in the year 1912, and while the plaintiff was the owner of the upland lying between the lower or southerly end of the Jorgenson thousand foot reservation and the Alaska Juneau wharf, the City of Juneau constructed a plank roadway over the tide-lands lying in front of plaintiff's

said upland, having an approximate width of twenty feet; that said roadway was built on piles and not along the line of mean high tide, but wholly over the beach or shore land several feet below the line of ordinary high tide; that the plaintiff did not consent to or give the city any right whatsoever to construct said road but that the same was constructed without consulting the plaintiff; that the [47] construction and maintenance of said street does not, and never did, interfere with any of the plaintiff's rights, and that it is so constructed that the plaintiff can wharf out and have access to deep water, notwithstanding said plank road.

And from said findings of fact the Court draws the following

CONCLUSIONS OF LAW.

I.

That the plaintiff is and was at the time of the commencement of this suit, and of the doing and threatening to do the things mentioned in the complaint, the owner, in possession and entitled to the possession, of the upland lying along the shore of Gastineau Channel between the southerly end of the Jorgenson reservation to the fish-house, situate approximately 400 feet to the south of the southerly end of said Jorgenson reservation.

II.

That the plaintiff, as the owner of the uplands above referred to, is entitled to all the littoral rights attached to uplands abutting on a navigable highway, and more particularly to the right of access over said tide-lands to the navigable waters of Gastineau Chan-

nel, and the right to construct a wharf as an aid to the exercise of the said right of access.

III.

That plaintiff is entitled to a decree of this Court enjoining the defendant from constructing, continuing or maintaining on the tide-land in question any structure of any nature or description which in any way cuts off, obstructs or interferes with the said free and uninterrupted access and the building of said wharf.

Dated this 3d day of July, A. D. 1915.

ROBERT W. JENNINGS,
Judge. [48]

Filed in the District Court, District of Alaska, First Division. Jul. 3, 1915. J. W. Bell, Clerk. By ———, Deputy. No. 1020-A. In the United States District Court for the District of Alaska, Division No. One. Alaska Juneau Gold Mining Company, a Corporation, Plaintiff, vs. Worthen Lumber Mills, a Corporation, Defendant. Findings of Fact and Conclusions of Law. [49]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 1020-A.

ALASKA JUNEAU GOLD MINING COMPANY,
a Corporation,

Plaintiff,

vs.

WORTHEN LUMBER MILLS, a Corporation,
Defendant.

Decree.

This matter coming on to be heard and the plaintiff and defendant being both present and having adduced evidence to prove the issues and the Court being fully advised in the premises and having made its Findings of Fact and Conclusions of Law, which are in writing and on file herein, from which, it appears that the plaintiff is entitled to an injunction against the defendant enjoining it from placing or maintaining structures on the tide-lands situate on the shore of Gastineau Channel at a point hereinafter more particularly described,

NOW, THEREFORE, it is considered adjudged and decreed that the defendant be and it is hereby perpetually enjoined and restrained from constructing or maintaining any piles, platform or structure of whatsoever nature or description on the tide-flats or tide-lands, situate on the shore of Gastineau Channel, between the southerly end of the Jorgenson thousand foot reservation, which is 1555.8 feet to the south of corner No. 1 of the Juneau Townsite, measured along the shore of the channel, and a point on the shore in line with the building known and referred to as the "fish-house," situate approximately 400 feet to the south from the said southerly end of said Jorgenson Reservation, and 1955.8 feet to the south measured along the shore from corner No. 1 of the patented townsite of Juneau. And the said defendant is ordered herewith to remove any and all structures placed by it or maintained by it on said tide-flats so above described, as being situate between

the said southerly end of the Jorgenson Reservation and the said fish-house. [50]

The foregoing decree, however, is subject to the following, to wit:

WHEREAS, defendant has assured this Court that it intends to appeal from said decree, and that it will prosecute its appeal with all practicable diligence, and has applied to this Court for an order staying the operation and effect of the said injunction until said appeal is finally acted upon by the Appellate Court; and,

WHEREAS, it appears that this is a proper cause for the exercise of the discretion of the Court to require bonds;

NOW, THEREFORE, it is further ORDERED that the foregoing injunction shall not be operative until and unless the plaintiff shall give a good and sufficient bond, running to the defendant, its heirs and assigns, in the sum of \$15,000.00, with sureties to be approved by the Judge of this Court, or in his absence by the Clerk of this Court, conditioned that if the final determination of this cause shall be in favor of defendant, the plaintiff will restore the defendant to the status which it now occupies with respect to the tide-land involved herein, and to all the benefits, advantages and privileges now accruing to said defendant, and of which said defendant would have been deprived by reason of said injunction. Defendant is allowed sixty days within which to present Bill of Exceptions.

Done in open court this 27th day of July, A. D. 1915.

ROBERT W. JENNINGS,
Judge.

Filed in the District Court, District of Alaska,
First Division. Jul. 27, 1915. J. W. Bell, Clerk.
By ———, Deputy. [51]

*In the District Court for the District of Alaska,
Division No. One, at Juneau.*

No. 1020-A.

ALASKA JUNEAU GOLD MINING COMPANY,
a Corporation,

vs.

WORTHEN LUMBER MILLS, a Corporation,

Memorandum Opinion. [52]

JENNINGS, Judge:

It would serve no good purpose to review the many authorities cited by the parties to this suit as to rights of an upland owner in Alaska, for those rights have so often received consideration from the Circuit Court of Appeals of the Ninth Circuit that it is too late to question in this court at least, the doctrines announced by the Appellate Court.

Plaintiff contends that the upland owner is entitled to "wharf-out," while defendant controverts this contention. By the plaintiff the Court is referred to the case of Dalton vs. Hazelett, 182 Fed. 562, where our Circuit Court of Appeals sustained the right of Hazlett to wharf out; and by defendant

the Court is referred to the language of Judge Gilbert in *McCloskey vs. Pacific Coast Company*, 160 Fed., 179, as follows: "While it had not the right to wharf-out on the tide-lands in front of its property," and to other cases in which the "right to wharf-out" is in general language denied.

There is no conflict between the principles enunciated in these two cases from our Appellate Court. It is laid down in the case of *Hampton vs. Columbia Canning Company*, 161 Fed. 64, and the case of *Barron vs. Alexander*, 206 Fed. 272, and in several other cases from the Court of Appeals, that the upland owner has the "right of access to navigable water." Access for the upland owner to and from the navigable water does not mean necessarily access for him merely as a pedestrian, or as an equestrian, or as a teamster. It means access to or from the water in the usual way by which such access is attained and enjoyed; and that is dependent upon the purpose for which such access is desired, and upon the reasonableness of the manner in which it is proposed to make such right available. The right of access to and from the deep water is analogous to the right of access enjoyed by an abutter upon any other highway. The latter has the right to use his land for the purposes for which he desires and for [53] which it is susceptible. The only instrumentality that can approach the upland from the navigable water is one that is capable of navigating the navigable water, to wit, ships boats and other water craft; those are the things which navigate the highway, and those are the things which bring to the upland that which the

owner desires to use upon it, and it is by means of these that the owner leaves his land to navigate the highway. Ships are ineffective unless they proceed from one place to another and they cannot usually land without wharves and docks to tie to, and usually they cannot discharge their freight except by means of wharves. If it be necessary for such "navigators of the highway" to have a wharf to which to make fast in order that this right of access may be enjoyed by the upland owner, then the latter has a right to construct on the shore such a wharf as may be appropriate. He may do this, not because he has a right to erect the structure on the shore, but because he has a right of access to the deep water and he cannot enjoy that right except by means of a wharf. The right to build a wharf in such cases is not a major right, not an independent right, not an all sufficient right—it is a qualified right, having no potency whatsoever except in so far as it is referable and appertinent to, and is a part of that other right, called the right of access. The owner of a right of access certainly has the right to make his right of access practical.

"It is a general rule that when the use of a thing is granted, everything is granted by which the grantee may enjoin such use. By analogy, we may reason that the riparian owner's right of access to the navigable waters in front of his upland comprehends, necessarily and justly, whatever is needed for the complete and innocent enjoyment of that right."

(80 N. E., 670.)

And so in the case of Dalton vs. Hazelett, *supra*, our Circuit Court held that Hazelett, although not having and not claiming to have any right or title to the soil below high-water mark, yet had the right to build a wharf from his upland to the deep [54] water in order to facilitate his access to and from that deep water, using the following language:

“(182 Fed. 573.) We think that under the facts stated, the plaintiff is entitled to be relieved against this obstruction; that while in a territory a grant of land bordering on or bounded by navigable waters conveys to the grantee no right or title to the shore or soil below high water mark, nevertheless such a grantee has the right to a free and unobstructed access to such waters. (1 Farnham on Waters, 297.) But how shall the littoral owner have access to navigable waters where shoal water intervenes? The Supreme Court has answered this question in Dutton vs. Strong, 66 U. S. 23-32, where the Court said: ‘Wherever the water of the shore so to speak is too shoal to be navigable, there is the same necessity for such obstructions as in the bays and arms of the sea; and where that necessity exists it is difficult to see any reason for denying to the adjacent owner the right to supply it; but the right must be understood as terminating at the point of navigability, where the necessity for such erections ordinarily ceases.’ ”

In 17 N. W., 629, it is said:

“This expression ‘to the point of navigability’ must be understood ‘as giving the right to the

extent necessary to make the abutting property reasonably available at any ordinary stage of water for any kind of navigation for which the stream is used, and for which it is adapted. It must have reference not only to an ordinarily low stage of water but also the size and kind of vessels which navigate the stream, and the kind of business done upon it.”

There is nothing in *Columbia Canning Company vs. Hampton*, nor in *Barron vs. Alexander*, nor in any other decision of the Circuit Court of Appeals to which this Court’s attention has been directed which is not in strict conformity with the doctrine announced.

In the *Columbia Canning Company* case it was neither alleged nor proven that the plaintiff’s right of access was cut off. In that case the plaintiff founded his action on an alleged right in himself to keep anybody else from erecting a structure on the tide-land in front of his upland because it would interfere with a fish-trap which he wanted to build on the tide-land (the right to erect such fish-trap not being at all referable to any right of navigation or any right of access). The complaint did not allege that the upland owner’s access was being interfered with, and the Circuit Court simply held that the complaint did not state a cause of action; In the *Barron* case the lower court *found as a matter of fact* that the erection being made by Alexander [55] did not interfere with any right of access inhering in *Barron*, and the Circuit Court of Appeals simply sustained the holding. In neither case was it held

that the upland owner had not the right to wharf-out in aid of his right of access.

THE RIGHT OF ACCESS IS AN EASEMENT ONLY.

It is said in *Yates vs. Milwaukee*, 77 U. S. 594, this right is “a right by which, when once it is vested, the owner can only be deprived in accordance with the established law, and if necessary that it be taken for the public good, upon due compensation.”

Having, then, that right of which he cannot be deprived by the Government except on due compensation, certainly an intruder cannot deprive him of it, nor can any other person who has no greater right than he has. The upland owner having no property right in the soil of the foreshore but only a right of access to and from navigable water, the right is only as easement.

It is only for the purpose *of use* in getting to the highway that the right of access is given; if the upland owner has *no use* for the access, the mere *right of access* is ineffective. This is indicated by the following language in *Gould on Waters*, 2d Edition, Sec. 149, page 304:

“But a littoral proprietor, like a riparian proprietor, has a right to the water frontage belonging by nature to his land, although the only practical advantage of it may consist in the access thereby afforded him to the water, *for the purpose of using the right of navigation*. This right of access is his only, and exists by virtue and in respect of his riparian property. It exists, in the case of tide waters, even when the

shore is the sovereign's property, both when the tide is out and when it is in. It is distinct from the public right of navigation, and an interruption of it is an encroachment upon a private right, whether caused by a public nuisance, or authorized by the legislature." (Italics ours.)

USE MUST BE REASONABLE.

This easement—this right of access, like all other easements, is subject to the general rules that the use must be reasonable. (*Hedges vs. West Shore Railroad*, 44 N. E. 691), and "What shall be deemed a reasonable and proper use of a way depends [56] largely on the local situation and on the public usage." (14 Cyc., 1207.)

If the easement is not susceptible to the use for which it was dedicated, there can be no injury for which an injunction will lie.

2 Beach Equity Jurisprudence, Sec. 713, citing
Rouge vs. Appallaacha Cola, 25 Fla. 672;
Prince vs. McCoy, 40 Ia. 533;
Bigelow vs. Hartford, 14 Conn. 565.

If the owner of the dominant estate has other and equally convenient means of access to it and will not suffer any material damage by the alleged obstruction, equity will not interfere.

2 Beach Injunction, sec. 1017.

As said in *Olinda vs. Lathrop*, 21 Pickering, 297 (38 Mass.)

"What may be deemed a reasonable and proper use of a way, public or private, must depend much on the local situation and much on public usage. The general use and acquiescence

of the public is evidence of the right. The owner of land may make such reasonable use of a way adjoining his land as is usually made by others similarly situated. As to the reasonableness of the use, it may be laid down that in a populous town where land is very valuable it is not unreasonable to erect buildings and fences on the line of the street and to place doors and gates in them so as when opened to swing over the street."

"Where a way is granted or reserved without any limitation as to its use it will not necessarily be confined to the purposes for which the land was used at the time the way was created but may be used for any purpose to which the land accommodated by the way may naturally and reasonably be devoted."

14 Cyc. 1207, and cases cited in Note 95.

In *Barnes vs. Midland Railway Company*, 85 N. E. 1096, the Court said:

"It is enough to say that either as littoral owner or by virtue of its letters patent, the defendant had the right to construct and maintain a pier that was reasonably adapted to the purpose for which it was primarily intended, and that was to provide a means of passage from the upland to the sea. To the extent that the reasonable exercise of this right necessarily interfered with the right of the public to pass along the foreshore, the former was paramount and the latter was subordinate; and the logical corollary to that proposition is that, just in so far as

the attempted exercise of the littoral or riparian right passed the prescribed bounds of necessity and reason, the conditions were reversed and the right of passage along the foreshore remained the paramount right. That is so because the littoral or riparian owner, in his capacity as such, acquires only those rights in the foreshore [57] “which are necessary to enable him to make a reasonable use of his upland; and the principal attribute of such use is access to and egress from the open water. The defendant therefore had the right to erect and maintain a pier for the purpose of connecting its upland with the sea. Just so far as it was a necessary consequence of the reasonable exercise of that right to obstruct the foreshore and thus to limit the free and convenient passage of the public, the defendant’s rights are superior to the extent that the defendant transcends these bounds, the rights of the public remain unaffected.”

It is urged that to accord to the upland owner this right of access would lead to monstrous results. The inquiry is made: If a person owns a mile or more of water front and is not using and is not needing the foreshore for the purpose of having access to or from the navigable water, is he entitled to sit still and say to every one else, “Although I am not using this foreshore for any useful purpose, yet you shall not erect any structure thereon because that will preclude me from using the right of access ten years from now.” The Court has been cited to one case which seems to subscribe to such a doctrine, to wit: *Reeves vs. Brooks*

Co., 86 N. W. 337. That is a Minnesota case and in that State the fee in the land to the center of the stream is in the riparian owner. The answer to the question is found in a consideration of the fact that the right of access is an easement only, and that the easement must be *exercised reasonably*.

In the case of Coburn vs. Ames, 52 Cal., at page 398, it was said:

“Assuming as we do for the purpose of this decision that the riparian owner is entitled to wharf out to deep water, it is clear, we think, that this right is in the nature of a franchise or privilege, to be exercised or not by him at his election. He may never see fit to avail himself of the privilege; and it cannot be pretended that while declining to avail himself of his right to wharf out, he is, nevertheless, entitled to the possession of the land below high-water mark on the theory that at some future time he may possibly change his mind and desire to erect a wharf. * * * and might prevent others indefinitely from engaging in the enterprise. A theory which works this result cannot and ought not to be upheld. * * * In this State there are numerous large landed estates, held in private ownership, which front for many miles on the shore of the ocean and on navigable bays and inlets within the ebb and flow of the tide; and if the doctrine were tolerated that each of these proprietors, while himself declining to erect and maintain the docks, piers and wharves which are necessary for the convenience of commerce, nevertheless, in virtue

merely of his riparian rights, might maintain ejectments for all such structures erected by others, which, when recovered, he [58] might either demolish or cease to use in aid of commerce, it is not difficult to see the disastrous consequences which would result from such a doctrine."

In the case of *Barron vs. Alexander*, 4 Alaska, 591, a former judge of this court, citing and quoting from many of the cases here quoted from, announced that the right of access did not necessarily mean access in a line drawn "at right angles to the shore line"—reasonable access, according to circumstances, was all the upland owner was entitled to. Judge Lyons there quotes approvingly from the decision in *Taylor vs. Commonwealth*, 47 S. E. 871, as follows:

In the case before us the property of the plaintiff is used merely for farming purposes. There has not been erected, and as far as the record discloses there is no purpose to erect, any pier or wharf. She is engaged in no business requiring such access to the channel of the stream as cannot be fully enjoyed consistently with every right which the state has exercised, or which it has delegated to others. The commonwealth holds as trustee a vast body of land covered by the flow of the tide, precisely as in the case before us, for the benefit of her citizens. It is not only her right, but her duty, as such trustee, to render this property productive. Is it reasonable that the commonwealth, holding title to the soil, is to be wholly subordinated in the use of it to the use

with which another is clothed merely by virtue of being an owner of the adjoining shore, when the rights of each and all can be fully protected without diminution and without hindrance? If the time should come when the river front of the plaintiff shall be divided into lots, whose owners find it necessary to their profitable enjoyment to erect piers and wharves upon them if they engage in business which shall require exclusive access to the channel of the stream, it may be that a case could then be presented more meritorious than that which we have under consideration, and, in the light of changed conditions, the court may be again called upon to consider the respective rights of the riparian owner and those remaining in the commonwealth, or which have been granted by her to others.”

From the foregoing it would appear that the claimant of littoral rights must show—

- (1) That he is a littoral proprietor;
- (2) That he desires to use the tide-lands to get to deep water;
- (3) That the use contemplated to be made and the method of availing himself of the use, is reasonable;
- (4) That the access is being interfered with.

[59]

IS PLAINTIFF A LITTORAL PROPRIETOR?

Plaintiffs acquired the General Grant lode claim from the grantors of defendant and before the defendant acquired any rights. The mining claim was bounded by the beach—the conveyance was on record

at the time defendant purchased. Defendant must be held to have known that the mining claim was bounded by the beach. His grantor Jorgenson reserved only 1000 feet along the shore; presumably that is all he needed.

Not only that, plaintiff is a littoral proprietor by virtue of the Indian occupation, to which it succeeded. Indeed, it does not seem to be seriously contended that plaintiff does not own the upland, but is contended that his littoral rights are cut off by the

STREET

Defendant contends that the plaintiff has no littoral rights, because, as he asserts, the city of Juneau has opened up a street in front of plaintiff's upland and thereby a public right intervened (and does now intervene) between the upland and the deep water, and insomuch as plaintiff did not object to the opening up of the street his mouth is now closed.

This contention that there is such a street rests upon the following evidence:

In 1912 the City of Juneau planked over a strip —feet in width running in front of plaintiff's upland. This suit was brought August 6, 1913. From 1912 to the last mentioned date the public have constantly used said street to such an extent that it has become one of the principal streets of the town. Plaintiff has never taken any steps to prevent the public from so using the "street."

However, the evidence also shows that that portion of this so called street which is in front of the premises in dispute is [60] *between high and low-water mark*, that is, on the tide-lands. Now, the

public had a right to pass to and fro over that strip of shore, whether there was or was not a street there, provided there was no interference with plaintiff's access to deep water. The planking over of that space and calling it a street did not in any way increase the public right of passage nor decrease or interfere with plaintiff's right of access. Plaintiff therefore was and is in no position to protest. It does not appear that he has at any time had any standing in equity to protest. An application by him for an injunction against the so called street would at once have met with the answer that his right of access has not been impaired: Having then no standing to make complaint, he cannot be prejudiced by the fact that he made no complaint.

Plaintiff has never conveyed any of his upland to the city, nor dedicated it to the public use, nor in any way signified his assent to the cutting off of any of the upland rights, or shown even to have knowledge that such a claim was in contemplation. No upland rights have been condemned. To say that the mere pronouncement by the city that "this piece of shore land, which, like all other shore land, *has been* a passage way without cutting off littoral rights, shall *from now on* be a passage way which *shall* cut off littoral rights," would be to make an untenable statement. Certainly such a mere pronouncement could not have that effect in one short year.

The Miocene Ditch case, 146 Fed., 680, and the other cases cited by defendant on this point depend on the law of estoppel. In each case cited the complainant had it in his power to prevent the taking of

his land without compensation. He chose to take no such steps. He stood idly by while large sums were expended and the courts held that he was relegated to his action for damages. But here the upland owner had no cause for complaint because his rights were not interfered with. [61]

The Court therefore experiences no difficulty in finding that the plaintiff is the owner of the upland, and has the usual littoral rights.

We pass, then, to a consideration of

THE ACCESS DESIRED.

What is the nature and extent of the access desired? Is that nature and extent reasonable? How does plaintiff propose to avail himself of that right of access? Is that way reasonable? These are all pertinent questions.

Plaintiff has shown that it is the owner of a large number of quartz claims in the mountains back of Juneau and that it desires to develop them by transporting the ore taken and to be taken therefrom, to the mills which are to be situated upon the millsites which it has acquired on the upland back of the tideland in controversy. The testimony of Mr. Bradley, the manager of the plaintiff company (as supplemented by Plaintiff's Exhibit "Y") is to the effect that on the upland just back of the proposed wharf is to be situated a Turbo Electric Power-house and an oil tank of capacity 30,000 gallons, and that higher up on the upland are to be situated mills with an ultimate capacity of 8,000 tons per day. A pilot mill of 50 stamps has been erected and is in operation and more than a million dollars has been expended in

getting ready for the more extensive operations. The tunnel through the mountain for the transportation of ore from the mine to the mill has been completed, and the hauling of ore through it is in active operation. The company has raised \$4,000,000 more for the prosecution of the works.

The space on Defendant's Exhibit "Y," marked in red "Proposed Wharf," is the site of the obstructions complained of. This space lies wholly on tideland and in front of the upland of which plaintiff is the owner. Mr. Bradley further testified that on that space plaintiff intended to build a wharf immediately for the receiving of coal and that on this wharf would be built [62] coal-bunkers for the landing and storage of coal to be used in connection with the works. He testified that plaintiff contemplates the immediate erection of the said 8000 ton milling plant, and that such an undertaking will require a tremendous amount of materials—iron work, steel work, heavy machinery, etc., and that this must all be landed and assembled so that it can be handled in the proper way and in the proper sequence, and that the yarding of such a vast amount of materials and machinery requires considerable area, so located that the materials may be most conveniently handled. When asked if there was any other space available for that purpose, he answered: "There is a small amount of space between the two points marked warehouse, but we haven't considered that because that alone is not sufficient."

The Court can see how this might be the case. If in the construction of these mills everything could

move like clockwork; if all material could be delivered on the wharf bit by bit exactly when needed; if when landed, it could be immediately removed from the landing place and installed,—it is likely that a wharf smaller than that desired might answer all purposes. But the very nature and magnitude of the enterprise precludes this possibility. Not mining machinery of every kind is kept in stock—much of it has to be made to order, of particular dimensions and after special patterns; it requires time in the making—it is not all made by the same concerns; it will not all be delivered at the same time nor in the same vessels. It is not at all unthinkable that that which is needed at a later date may be delivered at an earlier date. In such cases a vast amount of shifting must be done. That which is delivered before needed must be moved to give place to later shipments. It is reasonable to suppose that large vessels, each freighted with particular kinds of material, may have to be accommodated at the wharf at one and the same time. Lines will have to be run at angles and for considerable distances to hold these vessels. The Court has no reason [63] to question the good faith of the enterprise nor to doubt Mr. Bradley's statement that all this space will be needed, and that the company purposes to proceed immediately. The witness furnished no figures or estimates and contented himself with the general statement, but this was sufficient on direct examination and he was not cross-examined on that point. The Court concludes that the figures and estimates could have been given and would have borne him out. It all seems reason-

able and there is no evidence to the contrary.

It may be true that the plaintiff has other water frontage further down the channel where it *might make* a wharf. The Court expresses no opinion on that point, for the question is not whether or not some other place might be put up with, but whether or not the place which is desired is reasonable and proper. It surely is not unreasonable to desire that the landing place of the materials shall be as near to the place of proposed use as it is practicable to have it.

It is found, therefore, that the proposed use of the right of access is necessary and reasonable.

The plaintiff's right of access not being limited to the right of mere physical passage over the tideland, but embracing also the right to use the foreshore in such way "as may be needed for the complete and innocent enjoyment of that right," it follows that he is entitled to an injunction against any interference with that right.

It may be a hardship on defendant thus to be confined to the 1000 foot reservation made in the deed to plaintiff's grantors, but I cannot see how that is to be avoided. One man's necessities cannot be made the measure of another man's rights. When Jorgenson reserved the 1000 foot strip, presumably that is all he wanted. The Sovereignty grants the upland and thereby burdens the tide-land with the easement, and anyone occupying the tide-land does so subject to the easement. That is defendant's situation [64] as to any occupancy outside of the 1000 foot reservation.

The findings and decree will be for the plaintiff. I am not so sure, however, about the form of the injunctive part of the decree. Until these obstructions actually interfere with the work of building, plaintiff has no right to injunction. Let the decree be so framed that, in case there is built a wharf smaller than the one contemplated, or in case no wharf at all be constructed, defendant will not have been needlessly deprived of the advantage which his occupancy and use of the tide-land has obtained for it. There must be precedents for such form of injunction. Counsel might examine

Crocker vs. Manhattan, 66 N. Y. S., modified
in 70 N. Y. S. 492.

McCann vs. Chasm Power Co., 136 N. Y. S.
383.

Loukes vs. Payne, 125 N. Y. S. 850.

[Endorsed]: No. 1020-A. In the United States District Court for the District of Alaska, Division No. One. Alaska Juneau Gold Mining Company, a Corporation, Plaintiff, vs. Worthen Lumber Mills, a Corporation, Defendant. Memorandum Decision. Filed in the District Court, District of Alaska, First Division. Apr. 30, 1915. J. W. Bell, Clerk. By John T. Reed, Deputy. [65]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1020-A.

ALASKA JUNEAU GOLD MINING COMPANY,
a Corporation,

Plaintiff,

vs.

WORTHEN LUMBER MILLS, a Corporation,
Defendant.

Bill of Exceptions. [66]

Index of Exhibits

(hereto attached).

WORTHEN LUMBER COMPANY'S EXHIBITS:

Exhibit #3—Deed dated Mch. 24, 1913, between
Alaska Supply Co. and Worthen
Lumber Mills.

Exhibit #4—Photograph showing sawmill, etc., of
Worthen Lumber Mills, taken at
3:25 P. M. July 30, 1913.

Exhibit #5—Photograph taken approximately
200 ft. below boiler-room of mill,
looking down channel and across
toward Treadwell.

Exhibit #6—Photograph taken from main Alaska
Juneau dock looking up past the
float through the log boom.

Exhibit #7—Plat of Mineral Survey No. 982, A
and B.

Exhibit #8—Map Worthen Lumber Mill property, showing Abe Lincoln and General Grant lodes.

Exhibit #9—Ordinance No. 87 of the Town of Juneau, providing for extension, etc., of Franklin St.

Exhibit #10—Plan of Franklin St., 1907.

Exhibit #11—Photograph representing portion of mill below the Jorgenson Reservation line seaward.

Exhibit #12—Photograph taken from float at lower end boom looking toward mill—showing boom grounds, etc.

Exhibit #13—Photograph looking up towards Alaska Juneau tramway and mill.

Exhibit #14—Photograph taken from street at extreme end city limits, looking up the hill at Alaska Juneau tramway.

Exhibit #15—Photograph taken from street at extreme end city limits, showing down the channel southeast from Alaska Juneau wharf.

ALASKA JUNEAU COMPANY'S EXHIBITS:

Exhibit T—Location notice of "A" millsite.

Exhibit V—Deed from J. Z. Bayless to Alaska Juneau Company, transferring "A" millsite, dated July 22, 1911.

Exhibit X—Deed from Jimmie Bean, et al., to Alaska Juneau Company, dated August 22, 1914. [67]

ALASKA JUNEAU COMPANY'S EXHIBITS
(Cont.):

Exhibit Y—Map showing Jorgenson 1000 ft.
reservation.

Exhibit Z—Deed from Fanny Johnson, et al., to
Alaska Juneau Company, dated
May 1, 1913.

Exhibit A-1—Deed from John Jackson to Alaska
Juneau Company, dated July 25,
1912.

Exhibit H-1—Location notice of General Grant
lode.

Exhibit K-1—Notice of amended location of "U"
millsite.

Exhibit N-1—Deed from R. G. Wayland to Alaska
Juneau Company, transferring
"U" millsite, dated Feb. 15, 1913.
[68]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1020-A.

ALASKA JUNEAU GOLD MINING COMPANY,
a Corporation,

Plaintiff,

vs.

WORTHEN LUMBER MILLS, a Corporation,
Defendant.

BILL OF EXCEPTIONS.

This cause came duly on to be heard before the
Honorable Robert W. Jennings, Judge of the above-
entitled court, at the courthouse in Juneau, Alaska,

on the 15th day of April, A. D. 1915, without a jury; Hellenthal and Hellenthal, Esqs., appearing for plaintiff, and John Rustgard, Esq., appearing for defendant; that thereupon the following evidence was adduced and proceedings had, to wit:

(This case was tried together with other cases, which accounts for the fact that some of defendant's evidence appears in the records before any evidence on behalf of plaintiff appears.)

[Testimony of Victor Wilhelm, for Defendant.]

VICTOR WILHELM, a witness called on behalf of the Worthen Lumber Mills, being first duly sworn, testified as follows:

Direct Examination by Mr. RUSTGARD. Q. State your name, Mr. Wilhelm. A. Victor Wilhelm. Q. What is your occupation? A. Surveyor. Q. How long have you followed that occupation, approximately? A. About four or five years. Q. You are a United States Mineral Surveyor as well as a land surveyor? A. Yes. Q. Are you familiar with the waterfront of Juneau from the sawmill, including the sawmill, along the channel down towards the Alaska Juneau wharf? A. I am. Q. Have you made a survey of that track of ground? A. I have. Q. I will ask you to look at this blue-print (handing blue-print to witness); have you seen this blue-print before? A. I have. [69—1] Q. Who made it? A. It was made from surveys made by me—by Mr. Wettrick and myself. Q. Mr. Wettrick, your partner as a surveyor? A. Yes, sir. Q. Made the survey and this is a blue-print of the tracing you drew from the survey? A. Yes. Q. Is this a correct sur-

(Testimony of Victor Wilhelm.)

vey and a correct map of the survey? A. It is.

Q. Now, what scale is this drawn to? A. Fifty feet

to the inch. Q. I call your attention to the claims

marked Abe Lincoln Lode and General Grant Lode;

in making the survey did you find the corners of

those mining claims? A. No; the only corner found

was, I think, corner No. 2 of the General Grant.

Q. Where is corner No. 2 of the General Grant? A.

Why, up there where it ties, a known point by which

we established the corners. Q. Where did you get

the description of the claim? A. From the Surveyor

General's Office. Q. I call your attention to a fine

hair-like line cutting the place marked "Dry-shed,"

a little southerly from the center of the dry-shed

and continuing a little below Franklin Street until

opposite the General Grant it crosses over to the

northeasterly side of Franklin Street—what does

that line represent? A. That represents the

meander line or line of mean high tide which was

established by J. Frank Warner, Townsite Surveyor,

in the townsite survey, which overlaps a part of

these claims. Q. This meander line marks the line

of mean high tide? A. As established by Mr.

Warner. Q. Who was Mr. Warner? A. He was the

United States surveyor. Q. Have you checked up

that line yourself to determine whether it was cor-

rectly established? A. Yes, sir, I have. Q. Was it

correct? A. It was a year ago; it was correct as

to mean high tide, although conditions are changing

along the waterfront; to-day I think the mean high-

tide line is a little further out. Q. A little lower

(Testimony of Victor Wilhelm.)

down? A. Yes. Q. Now, Warner, is in the employ of the Department of the Interior? [70—2]

A. Yes. Q. He surveyed the land above mean high tide for the purpose of a townsite patent? A. He

did. Mr. HELLENTHAL.—I think, your Honor, that is irrelevant testimony. The COURT.—I don't

know—I cannot tell yet. Q. Have you marked on this map the course of Franklin Street from the

northeast corner of the dry-shed of the mill in a southeasterly direction? Since you made that blue-

print, you have marked that on the tracing from which the blue-print was taken? A. Yes. Q. I call

your attention to the place opposite or out from the shore where there is a bight in the beach the lower

side of Franklin Street southeasterly from that row of pilings marked on the lower side of that street—

what building or structure, if any, does that represent? A. That is a structure known as the fish-

house. Q. Do you know of the gridiron on the northwesterly side of the fish-house? A. Yes, a platform.

Q. That is for the purpose of placing boats on, that is what is meant by gridiron, isn't it, for boats—

three or four timbers laid horizontally, supported by piles? A. Yes; that is true. Q. Now, then, is

that gridiron included within the exterior lines? A. Yes, it is. Q. The shaded diagonal lines repre-

sent the building itself? A. Yes, sir. Q. And the gridiron is within the exterior lines and next to the

shaded portion? A. Yes, sir. Q. I asked you about the area marked "Planked"—how wide is that area

from the southwesterly side of Franklin Street? A.

(Testimony of Victor Wilhelm.)

Sixteen feet, planked. Q. Will you state to the Court the distance from the southeasterly end of that planked platform to the gridiron next to the fish-house? A. (After measuring.) It is about 270 feet. Q. These round circles on that space of ground adjoining the southwesterly side of Franklin Street—what do they represent? A. They represent pits where we sunk through mud and debris which had been recently deposited to the gravel beach; it is a fine mud, silt, which was deposited by sluicing. [71—3] Q. Well, is there anything here representing the piles? A. These are the dolphins or pilings out at the outer edge. Q. What is that (indicating) and this? A. Those are piling. Q. Now, then, what are the pilings there (indicating)? A. They are long piling driven in the beach line about 16 feet high. Q. Now, then, when you referred to the pits you referred to these little dots with the figures close to them? A. Yes, sir. Q. In that line, about 16 feet southwesterly from the street, there are four? A. Yes, sir. Q. The rest of them are piles? A. Yes, sir. Q. Do you remember what time these piles were put there—can you tell approximately? A. When they were first placed there? No, I couldn't say; they have been there for a year and a half, at least. Q. Well, what time did you sink those pits? A. Those pits were sunk in February a year ago, if I remember right. Q. That was long after the case was started? A. Yes, sir. Q. That was about a year ago—you did that at the request of Mr. Worthen? A. Yes, sir. Q. What is

(Testimony of Victor Wilhelm.)

the width of Franklin Street from the northeast corner of the dry-shed of the mill? A. To the south of that point the street is 20 feet wide as built today, although the city reserves, I think, a 30-foot width. Mr. HELLENTHAL.—We object to the testimony of what the city reserves. Mr. RUSTGARD.—That part of it may be stricken. Q. What time was that street built? A. The construction of the street was started in the spring of 1912. Q. Do you remember what time it was completed? A. It was completed that fall; it was built to connect with the Government road. Q. Now, where does the Government road start in? A. The Government road starts in at what is called the incorporated limits. Q. Now, this point marked with a cross is the limit of the incorporated town? A. Yes, sir. Q. And the city built the street down to that point and the Government continued it down to Sheep Creek? A. Yes, sir. [72—4] Q. From thence on this street where it runs through the city is built of planks upon posts placed upon the ground? A. Yes, upon piles. Q. Above or northerly from the dry-sheds, what is the width of the street? A. The width of the street as laid out is 40 feet, although it is not 40 feet wide at every point. Q. It isn't planked that wide? A. No, sir. Mr. RUSTGARD.—I offer this map in evidence. Mr. HELLENTHAL.—Oh, I guess there is no objection to it. The COURT.—Do you offer that as showing the condition of things as they now are? Mr. RUSTGARD.—Yes, your Honor. The COURT.—Very

(Testimony of Victor Wilhelm.)

well. (Whereupon said map was received in evidence and marked Worthen Company's Exhibit No. 1, and is a copy of exhibit 8, hereto attached.) Q. I call your attention to the space southerly from the fish-house marked "Float"—what is that? A. That is a float that has been constructed by the Alaska Juneau Company for the landing of small boats. Q. How is that constructed? A. It is a slip. Q. They drove a row of piles and have the float in between the piles? A. Yes, sir. Q. The piles are driven for the purpose of holding the float in position? A. Yes, sir. Q. The float rises and falls with the tide. These dots or circles in the channel southwesterly from Franklin Street and in an easterly direction along the shore from the sawmill—what do they represent? A. They represent dolphins that have been driven—there are some two, and some, I think, are three piling.

[Testimony of Edward Webster, for Defendant.]

EDWARD WEBSTER, a witness called on behalf of the Worthen Lumber Mills, being first duly sworn testified as follows:

Direct Examination by Mr. RUSTGARD.

Q. State your name. A. Edward Webster. Q. How long have you lived in Juneau, Mr. Webster? A. Since 1881. Q. Are you familiar with the part of Juneau where the sawmill and booming ground of the Worthen Lumber Mills is situated? A. Some; yes. Q. What has been your business during these years you have been in Juneau, principally? A. My

(Testimony of Edward Webster.)

business there was pile-driving. Q. Have you ever driven any piles on the ground now occupied by the sawmill I referred to? [73—5] A. I think I have driven them all. Q. When did you first start in driving piles there? A. In 1902. Q. Do you remember what time of the year? A. Why, in the spring of the year; I think it was in May some time. Q. What were those piles driven for? A. Well, they were driven for Mr. Jorgenson for the sawmill. Q. Now, that was Mr. J. P. Jorgenson? A. J. P. Jorgenson. Q. Is that the same person who operated the so-called J. P. Jorgenson Company? A. Yes, sir. Q. Do you remember now what time he started the sawmill? A. In the spring of 1902. Q. What time did he get it completed sufficiently to saw logs and lumber? A. I don't know whether it was that year or the next year—I am not sure of that. Q. Not sure of that? A. No. Q. Do you remember if the J. P. Jorgenson Company at any time did make any use of the shore land southeasterly from the sawmill? A. Make use of the shore land? Q. Yes, or the tide-lands. A. I know he had booming grounds there that he boomed his logs in. Q. Did he have any dolphins driven anywhere? A. Yes, I drove a line of what we call booming piles to hold his logs in. Q. Can you point out on this map, marked Worthen Company's Exhibit No. 1, that line of dolphins, approximately? A. I would say this like the line along through there (indicating on Worthen Company's Exhibit No. 1). Q. Did you ever drive any piles closer to the beach? A. Yes.

(Testimony of Edward Webster.)

Q. When and where? A. In August, 1912, we continued this row that is marked "Dolphins," we drove 10, continued it still further down; and on the shore we went along there and drove 17 piles in the shore line. Q. In August, 1912, you drove 17 piles on the shore line northwesterly from the fish-house? A. Yes, sir. Q. Approximately parallel to the beach? A. Yes. Q. At the time you drove those, had Franklin Street been planked at that time? A. No, sir. Q. How close to where Franklin Street was afterwards planked did you drive those piles? A. Now, I am not quite positive of that; some of those were cut off and Franklin Street was built on them. [74—6] Q. They form the edge of the street, anyway? A. Yes; I think there are some of them on the outside of it; I am not positive, but I know some of them were cut out of the road to build this street on, and I wouldn't say there wasn't some that the street is built on where they come handy. Q. At whose expense and request did you do that? A. This last? Q. Yes. A. Mr. Henry Shattuck. Q. He was then operating what is known as the Alaska Supply Company? A. That is the way we charged the bill, the Alaska Supply Company. Q. The piles that you drove for the mill, you drove at the request of the J. P. Jorgenson Company? A. J. P. Jorgenson Company, yes, sir. Q. And the string of dolphins you first drove was at the request of the same company, and those you drove in 1912 were driven at the request and expense of the Alaska Supply Company? A. Yes. Q. You know who occupied

(Testimony of Edward Webster.)

what was, or has been referred to as, the fish-house at the time you drove those 17 piles near Franklin Street? A. Yes; I drove the fish-house piles; there was three parties interested in it that paid me; I drove those, I think, in 1911. Q. Nels Pearson was one? A. Yes. Q. And Knudt Topness? A. Yes, that is the other one. Q. And Peder O. Holsboe? A. Yes; those are the three. Q. Do you remember what year you drove those piles for them? A. If I remember right, it was 1911; whether that is correct or not, I don't know; I went down and drove 75 piles for them early in the spring, whether that was 1911 or '12 I wouldn't say.

Cross-examination by Mr. JACK HELLENTHAL.

Q. I want to ask Mr. Webster a question or two. Mr. Webster, you drove all the piles that are in this log boom? A. Yes, sir. Q. You first drove piles for Mr. Jorgenson and afterwards for Mr. Shattuck? A. Yes, sir. Q. And there were no piles driven there except the ones that you put there? A. Of course, on the inside there was; Mr. Alex Hart drove [75—7] some inside of that, along side of the street after the street was in. Q. I mean until the time you put the piles in there in 1912 there had been no piles driven there except the ones you placed there? A. No, sir. Q. Now, the first piles you drove for Mr. Jorgenson were entirely out along the outer line indicated on this map that has been offered in evidence? (Referring to exhibit No. 1.) A. Yes. Q. Commencing with the sawmill and extending southward? A. No;

(Testimony of Edward Webster.)

they extend east. Q. Down the channel, anyway?

A. Yes. Q. Then while Mr. Jorgenson was the owner of the mill you drove some more piles in that some line, didn't you? A. Yes, we drove for Mr. Jorgenson—that is, first we started with a double pile and then alternated with a double pile, and then went back and put in double piles all along.

Q. So constructed the entire boom that you had a double line of piles the entire distance? A. Yes.

Q. The second time you didn't extend that boom any, you simply repaired it—went in and repaired it? A. No; we extended it down 50 feet, about.

Q. I am talking about the second time you drove for Mr. Jorgenson? A. No; we didn't extend it; we only filled in every alternate pile with a new pile again. Q. Now, the first time that you drove

piles for Mr. Jorgenson you drove them along the outer line indicated on this map? A. Yes. Q. And

you didn't double-pile except each alternate pile? A.

Each alternate pile; they are 50 feet apart; then I don't say just when it was, we went back afterwards and

drove those alternate piles. Q. You double-piled the entire distance? A. Yes. Q. You didn't extend

the boom any further south, or down shore? A. No,

sir. Q. And in 1912 you drove some piles for

Mr. Shattuck? A. Yes. Q. At that time you ex-

tended the boom further down in the channel? A.

Yes. Q. When you came there in 1912 there had been no piles driven along the inside row indicated on this

map? A. There had been no piles driven on the shore

anywhere. Q. You drove 17 piles extending down

(Testimony of Edward Webster.)

from the fish-house? A. Yes. Q. That was in August, 1912? A. Yes, sir. Q. That was the first time there had been any piles anywhere along there? A. Yes, sir. Q. And in that [76—8] same month, August, 1912, you extended the boom you had previously constructed for Mr. Jorgenson by driving other piles along the outward side of the boom? A. Yes, sir. Q. In the direction of down channel? A. Yes. Q. You put some 10 piles in there? A. Yes, sir. The COURT.—Now, let me ask a question right there: That was in 1912? A. Yes, sir. The COURT.—At the time of that transaction did you drive the dolphins as far down as they are represented on exhibit No. 1? A. I don't remember how it was in there, but I think the present ones that are in there now—I wouldn't say for sure whether any had gone out—you mean I drove those present ones there now, or extended that line down? The COURT.—You take exhibit No. 1—you see where the last dolphin to the south-east is down the channel—is that the extent that you drove the piling in 1912 for the Alaska Supply Company? A. Yes, sir. Q. There haven't been any piles driven there since you put them in in 1912? A. No; I don't think so. Q. It was in that vicinity, that lower end of the boom that you put the 10 piles in 1912? A. Yes, sir. Q. There were no piles in the place of those piles you put in—it was new piling? A. Yes, sir. Q. And you extended the boom down to the south to the extent of the piling you put in? A. Yes. Q. And at that time the

(Testimony of Edward Webster.)

street had not yet been built? A. No, sir. Q. That was in the spring of 1912? A. Yes. Q. And it was the preceding year that you drove the piles for the fish-house somewhere along there? A. Somewhere along there—I could look it up. Q. It was before that, anyhow, that you drove the piles for the fish company? A. Yes. Q. And it was along about that time that you drove the piles for the Alaska Juneau Company? A. I don't just remember on that—I have got the dates. Q. I am not trying to get the exact dates—it was along about that time, either a little before or a little after? A. No; it was after. Q. It was probably a little after? A. Yes. Mr. HELLENTHAL.—I guess that is all. Mr. RUSTGARD.—I think that is all.

Witness excused. [77—9]

It was then conceded by both parties and stipulated to be a fact that the J. P. Jorgenson Company was a corporation duly incorporated; that during the month of July, 1911, the name was changed to Alaska Supply Company; that the Worthen Lumber Mills was duly incorporated; the receipt for the Territorial license tax was then offered and received in evidence as exhibit No. 2; the deed from the Alaska Supply Company to Worthen Lumber Mills was then offered and received in evidence as exhibit No. 3, and is hereunto attached.

[Testimony of H. S. Worthen, for Defendant.]

H. S. WORTHEN, a witness called on behalf of the Worthen Lumber Mills, being first duly sworn, testified as follows:

Direct Examination.

Mr. RUSTGARD.—Q. State your name. A. H. S. Worthen. Q. You live here in Juneau? A. Yes, sir. Q. How long have you been in Juneau? A. I came here the 24th day of February, 1913. Q. Do you occupy any position with the Worthen Lumber Mills? A. Yes, sir. Q. What position? A. Manager, president of the company, and treasurer. Q. The evidence shows that your company purchased the so-called Jorgenson Sawmill property from the Alaska Supply Company at about the time you came here. A. The papers were closed on the 15th of February, 1913. Q. You have been in charge of the property since? A. Yes, sir. Q. And are in charge of it now? A. Yes, sir. Q. What is the cost, as well as the reasonable value, of the sawmill property proper—that is, improvements that you have on there? A. Exclusive of the real estate? Q. Yes. A. About \$61,000.00. Q. With reference to the buildings and machinery? A. Yes, and dock. That is very nearly what it is carried on the books as actual cost. [78—10] Q. That is the actual money put into it? A. Yes. Q. I ask you to look at this map, marked Worthen Lumber Mills Exhibit No. 1, and I will ask you some preliminary questions. This place marked dry-shed, that is a part of the mill proper? A. Yes, sir. Q. Used for a dry-

(Testimony of H. S. Worthen.)

shed? A. Used for a warehouse for dry lumber.

Q. The place marked sawmill, that is the mill proper? A. That contains the sawmill, the planing-

mill, the engine-room, boiler-room, and also this shows the dry-kiln. Q. The dry-kiln is the part

closest to the street? A. Yes, projecting over the side of the building; that is the boiler-room (indi-

cating). Q. The part closest to the street and also farthest to the southeast is the boiler-room?

A. Yes. Q. And what is marked Dock here is the dock erected on pilings? A. Yes, sir. Q. And

what is this part looking like a ladder running in a southeasterly direction from the sawmill? A.

That is the log-slip. Q. That is where you haul logs up from the water into the mill? A. Yes, sir.

Q. And there is a place marked Boarding-house on the upper side of Franklin Street across from the

sawmill—what is that? A. That is a ten-room rooming-house, rather boarding-house, which is used in

connection with the boarding-house which is down here (indicating). Q. Now, this marked Boarding-

house, that is a ten-room rooming-house belonging to the mill? A. Yes, sir. Q. And the place marked

Boarding-house is the place on this map on the upper side of Franklin Street across from the engine-

house? A. Yes, sir. Q. That is also used by and for the purpose of the mill? A. Yes, sir. Q. In

operating this mill, describe to the Court in what manner and by what method you bring the logs up

to the mill? A. We use the tug-boat to get them into what we call the pocket—it would be kind of

(Testimony of H. S. Worthen.)

a pond—bringing them in this way (indicating) along the beach from the southeast. [79—11]

Q. You come in along the south from the beach?

A. Southeast, in around this way (indicating) into the boom and then split open the raft, and hitch one side of the boom stick on this side, and the other on this side, and then feed the logs through there (indicating).

Q. Is there any reason why you cannot come up to the mill with the logs from the direction of Gastineau Channel and feed them in the mill that way? A. Can't hold them in the current.

Q. You mean the tide coming one way for a while, and then the other way— A. It usually sets this way; as near as I have been able to observe 22 hours out of 24 the tide is setting towards town.

Q. You cannot feed the logs to the mill from the direction of the center of the channel on account of the tide currents and waves both? A. No, sir.

Q. Now, then, if you come along your beach with your logs—that is, come floating them in the tide water along the beach, you are out of that tide current? A. Practically, still there is a little current always in the pond; enough so it moves the logs up to the mill—very slight.

Q. You said about 22 hours out of the 24 the current sets up towards the mill?

A. About that. Q. That is on account of an eddy, I suppose, formed by the tide coming around the mill here? A. No; I think it is formed more by the

eddy that goes back on the channel whenever the tide sets back in the upper bay here. There is a swing from somewhere down near Thane which

(Testimony of H. S. Worthen.)

comes this way on the beach (indicating)—practically this way all the time; out this way farther (indicating) the current is stronger. Q. Now, out farther from the mill the water is very deep? A. Yes, sir: Q. Too deep to set any piles? A. Yes, sir. Q. Have you any knowledge as to the depth of the water? A. I have only along the line of these dolphins (indicating); at extreme lowest low water this dolphin is about two feet out of water; horizontally, at the present time. The last piles we drove there were 98 feet long and lacked about six feet of being long enough. There was, the last time I measured—it was last fall—about 34 feet of water at that lower dolphin. [80—12] Q. At lowest low water there was about 30 feet? A. Yes, of course, it shoves off very rapidly from this point here (indicating). Q. It gets deep very rapidly as you go towards the channel from that point, and you cannot set dolphins any farther out? A. No. Q. Now, then, do you remember the distance from your southmost dolphin to the float of the Alaska Juneau alongside of their wharf? A. I wouldn't say exactly—there is approximately 140 feet. Q. Is that southernmost dolphin shown on this exhibit in position at the present time? A. That is a three-pile dolphin—the dolphin shown here—hemlock piles. Last year, in endeavoring to put a raft in here, we pulled it over to the middle, and this dolphin was caught in the middle, and this one can be seen at low tide; and we had two more piles driven—they are driven back about 35 or 40 feet this way

(Testimony of H. S. Worthen.)

(indicating). Q. You mean in a northwesterly direction? A. Yes, sir. Q. That much farther away

from the Alaska Juneau float? A. Yes, but the old dolphin we broke is still hanging in there; you can see it at low tide; it tipped over and dropped between these three piles. Q. At the time you came

here, Mr. Worthen, was Franklin Street from the northeast point of your dry-shed to the limits of the incorporated town constructed? A. Yes, sir.

Q. It was constructed and in operation when you came? A. Yes. Q. Where it is now? A. Yes.

Q. There is a place on the southerly side of Franklin Street marked on this map planked—How is that constructed, and what is it used for? A. It is constructed down to about this point (indicating) out of piling and posts. The COURT.—What do you call it on the map? A. It would be approximately the letter “K” in Franklin. We brought it down

to here with posts, set by hand, and then it is covered with capping running this way, and floored over this way, and used it for piling lumber on.

Q. That is, you put in bents of timber set by hand, on the ground? A. No; just posts set in the ground. [81—13] Q. Posts set in the ground by

hand? A. Yes. Q. How many strings of these timbers did you set? A. Two. Q. One near the street and one approximately 16 feet from the street?

A. Yes. Q. And you have capped over the two?

A. No; the caps run lengthwise of the street.

Q. Then you ran the caps parallel with the street?

A. Yes. Q. Then you have floored over the caps?

(Testimony of H. S. Worthen.)

A. Yes. Q. Then your decking runs parallel with the street? A. Yes, sir. Q. Now, that is used for piling lumber? A. Yes, sir. Q. What time did you start putting that in? A. In March, 1913. Q. What further did you do towards putting that in? A. We set all these piles, commencing at a point right there (indicating). Q. The point you marked? A. Opposite the end of the slip. These piles had been driven previous to my taking possession. Q. The piles northwesterly from that had been placed prior to the time that you took charge? A. Prior to the time that I took charge. Q. And after you took charge, you proceeded to set timbers approximately at the end of the slip along the southernly side of Franklin Street? A. Yes, sir. Q. Now, then, state to the Court how you proceeded from that point—how long you were at it? A. We started in at that time to set posts approximately 16 feet—they vary; some 16 and 20, some only 14—down there to the point where the fish-house property and ours intersect, right here (indicating); then we start on this side and set along here and put timbers on and floored it over as we had time and lumber. Q. You started in March—do you remember what date? A. I don't remember the date; it was approximately about the 15th of March. Q. And you continued to set this first row of timbers along Franklin Street down towards the gridiron at the side of the fish-house? A. Clear to the gridiron. Q. That would be opposite the point marked on the General Grant lode showing the deepest indent into the country?

(Testimony of H. S. Worthen.)

A. Approximately that. Q. I have marked that fish-house. Now, then, after you had [82—14] done that, you started to set the other tier of timbers farther out—16 feet farther out? A. Yes, sir; approximately 16 feet.

Q. Now, how long did you continue that work? A. We continued that work until the injunction was granted stopping us.

Q. You had got down to the point marked on this map as the end of the planking? A. Yes, sir.

Q. Where you have drawn a pencil mark across Franklin Street, and you were doing that work at the time the injunction was served on you in the case of the Alaska Juneau Gold Mining Company against the Worthen Mills? A. Yes, sir.

Q. Do you remember the date of that? A. No, I don't, but I think it was the first days of August—I wouldn't say.

Q. That was shortly after you started a suit against the Alaska Juneau Company to stop them from washing their debris down in the boom down there? A. No, it was some 30 days after, I think; it was shortly after the suit was started for an injunction against their stopping up the boom grounds.

Q. Now, then, at the time that injunction was served on you, had you set the second tier of timbers from the fish-house up to the end of the planking, as far as it went at that time? A. Those were piling, driven.

Q. The water was deeper at that point? A. Yes, sir.

Q. Who drove those pilings? A. Alex Hart.

Q. What time did he drive them? A. I think it was the very last of July; I would have to look it up on the books.

Q. Do you remember how many

(Testimony of H. S. Worthen.)

piles he drove there? A. 65, I think. I will correct that—I think it was 45 piles that he drove there

—I will not state that positively. Q. At any rate, when the injunction was served on you stopping you from continuing this platform, you had both tiers of piles driven clear down to the fish-house?

A. Yes, sir; and part of them sawed off. Q. Part of them sawed off ready for the capping? A. Yes,

sir; there was an additional row of piling driven before I came here that was separate from either of those I put in. Q. The street rests partly on those? A. No, sir. [83—15]

Q. Do you remember how many piles you put from the fish-house up here after you came and started the work in March? A. That Mr. Hart

drove? Q. No; he drove the outside tier here.

A. He drove the outside tier up to about this point (indicating)—it was approximately, I think, 45.

Q. And you set by hand— A. We set on the inside all the way through; I think on the inside there are some 60 or 64 piles set along there. Q. That was in

addition to what had been set before you came to the country? A. Yes, sir. Q. Those that Webster

testified to having set there are still there, are they?

A. Yes, sir; with the exception of one; I think it was broken away when the bulkhead broke away.

Q. What is the capacity of your plant? A. The average cut last year was 41,000 a day; runs from 30,000 to 60,000 a day. Q. At the time the first

action was commenced—that is to say, action 1010—A, Worthen Lumber Mills vs. Alaska Juneau, what was

(Testimony of H. S. Worthen.)

the condition prevailing up on the hillside above the sawmill, as to work going on there? A. At the time the injunction was sought they were just commencing to sluice off the sidehill. Q. There was no mill on that sidehill at the time? A. No. Q. They just started to sluice off the sidehill for a foundation? A. Yes, sir. Q. When did they first turn on the water? A. I think it was the 28th day of June. Q. How long before you applied to the Court for an injunction in that case? A. The same day. Q. After the injunction, or the injunction *pendente lite* was granted in that case, what steps were taken to divert the water and the debris from the sluicing away from your booming grounds? A. Well, they constructed two different flumes and bulkheaded the street. Q. They bulkheaded the street? A. Yes. Q. In what direction did they turn the water and the debris by that flume? A. It was carried right down through under the street, most of it, right near the fish-house. [84—16] Q. The sluicing was going on on the hillside approximately straight above where your log slip is? A. Yes, sir. Q. At an elevation varying from 2 to 400 feet above? A. Yes, sir. Q. Then a flume was built diverting the water and the debris to the street and was turned into the ocean at approximately the fish-house? A. Yes, sir; I think it came right under the edge of the fish-house. Q. Now, how long after that did they first start to bulkhead, as you say, the street? A. Practically the same time. Q. Now, who bulkheaded the street, and how was that done? A. Why, the men who were

(Testimony of H. S. Worthen.)

supposed to be in the employ of the Alaska Juneau used plank and fastened them to the outer row of the street piling. Q. Have you a picture here that shows that situation? A. There was one taken at the time,

I think. Q. I show you a picture here, which is marked Defendant's Exhibit "B," used on the preliminary hearing, and ask you if that shows the bulkheading you refer to? A. Yes, sir. Mr. RUSTGARD.—I offer that in evidence. (Where-

upon said picture was received in evidence and marked Worthen Lumber Mills Exhibit No. 4 and is attached.) Q. Could you state now at approxi-

mately what time that picture was taken? A. I think the date is on it. Q. It was used at the pre-

liminary hearing in this case? A. Yes, July 30, 3:25 P. M., 1913. Q. This bulkheading is shown to

the right in the picture? A. To the right; yes, sir.

Q. The sawmill is in about the center of the picture?

A. Yes. Q. And the string of dolphins you have referred to is shown to the left in the picture?

A. Yes. Q. This picture is taken approximately from the Alaska Juneau wharf or the fish-house?

A. I think it was taken from the end of this structure right here, the end of the wharf—that is, what we term the A. J. wharf. Q. This portion near the

Alaska Juneau float on which is written in ink "A. J. Wharf" is simply a double set of piles with capping and a track running over it? A. Yes, sir. Q. And

the wharf proper which they use for landing boats is lower down the channel? A. Yes, sir. Q. The right hand [85—17] corner of this picture shows the

(Testimony of H. S. Worthen.)

hillside on which the sluicing was started, or part of it? A. Yes, sir; part of the hillside. Q. This picture also shows a line or a string of houses on the upper side of Franklin Avenue—are those houses there yet? A. Yes, sir. Q. Some more built? A. Yes, been several built since then. Q. These houses are on the upper side, or shore side, of Franklin Avenue? A. Yes. Q. And the structure we see in front of these houses is what is marked on this map, Worthen Mills Exhibit No. 1, as Franklin Street? A. Yes. Q. I show you a picture marked Plaintiff's Exhibit No. 6, used at the preliminary hearing, and ask you in a general way what that represents? A. It was taken from a point approximately 200 feet below the boiler-room of the mill, looking down the channel and across toward Treadwell, showing the Alaska Juneau dock and the fish-house, and a portion of Franklin Street; and this on the left, the mill pond and the logs and part of the dolphin. Q. What time was that taken? A. 13th day of July, 1913. Q. The house to the left of the center of the picture farthest down the beach—what house is that? A. That is what we have always known as the fish-house. Q. That is the same property that is marked on this Worthen Lumber Mills Exhibit No. 1, as "Fish-house"? A. Yes, sir. Q. The pilings which are shown approximately opposite the fish-house on this picture—what piling is that? A. These along here are the piling that were driven on our ground, and these at the right were driven by the Alaska Juneau. Q. That is, on

(Testimony of H. S. Worthen.)

the shore side standing up high above the street were piles driven by you people? A. Driven previous to my coming here. Q. They are old piles? A. Yes.

Q. What is this railing or timber extending along the seaward side of Franklin Avenue? A. That is the railing the city put up along the street there.

Q. That timber is 4 x 4? A. Yes, sir. Q. How high above the street does that stand—above the docking?

A. I think it is approximately 44 inches. Q. And extends all the way [86—18] along that street on the lower side?

A. It did until we removed it when we built our planking. Q. Now, then, that planking you built was built for the purpose of using it for a lumber-yard?

A. Yes, sir. Q. And you are using it as such? A. Yes, sir. Q. It was necessary for that purpose?

A. Yes, sir. Mr. RUSTGARD.—I offer this picture, referred to by the witness, in evidence. (Whereupon said picture was received in evidence and marked Worthen Company's Exhibit No. 5 and is attached.)

Q. I now show you a picture, marked Plaintiff's Exhibit No. 5, used on the preliminary hearing, and ask you to explain, as near as you can, what that represents, and *from point* it was taken?

A. It was taken from the main Alaska Juneau dock, down at this point here (indicating). Q. You mean?

A. I think that is the westerly end. Q. It is taken from a point to the southeast of the float?

A. Yes, sir; looking up past the float through the log boom. Q. Had the float been put in at that time?

A. No, sir. Q. What are these piles in the foreground?

A. Those are the ones that form the road-

(Testimony of H. S. Worthen.)

way or railroad track on the wharf proper. Q. And the house in the right center of the picture—that is, the largest house, that is the fish-house which has frequently been referred to? A. Yes, sir; the largest one. Q. And in the center of the picture, showing three smoke stacks is the sawmill plant? A. Yes. Mr. RUSTGARD.—I offer that picture in evidence. Mr. HELLENTHAL.—What is the date of that picture? Mr. RUSTGARD.—13th of July, 1913. (Whereupon said picture was received in evidence and marked Worthen Lumber Company's Exhibit No. 6 and is attached.) Mr. HELLENTHAL.—Were those pictures all taken on the same date? The WITNESS.—No; I think one was taken on the 30th. Mr. HELLENTHAL.—The first one was taken on the 30th? The WITNESS.—I think the first one was taken the 30th of July, and the others the 13th, if I am not mistaken. Q. (By Mr. RUSTGARD.) After the injunction was granted and after this flume line was installed carrying the water and debris down towards and under the fish-house, was anything washed in the street from the hillside? A. Yes, sir. Q. To what extent? A. It filled up within probably an average of two and one-half or three feet to the planking of the street [87—19] Q. That was inside the bulkheading? A. Yes, sir. Q. And outside the bulkheading what was done? A. Quite a lot of silt and sand leaked through. Q. That leaked through? A. Yes; the bulkhead broke away twice with them—I think three times;

(Testimony of H. S. Worthen.)

and several times it washed over the top. They commenced at the bottom to build this bulkhead, and sometimes it would fill up faster than they planked and it would run over the boom ground.

Cross-examination by Mr. HELLENTHAL.

Q. Mr. Worthen, you know that that bulkhead broke accidentally up there, don't you, and that the rock and stuff came through by accident?

A. I don't think anyone did it purposely. Q. The boards just simply gave away—the weight got a little too heavy for it and broke them down. A. The piling that supported the street gave way. I don't think it was done purposely or intentionally.

Q. And the place where that silt was deposited or where the bulkhead broke, was at the lower end near the fish-house? A. No; it was approximately 200 feet—the worst break—this side. Q. About 200 feet this side of the fish-house, you mean? A. Yes, sir.

The COURT.—That is the northeast? A. Coming towards the mill of the Alaska Juneau. Q. (By Mr.

Hellenthal.) Now, you say Alex Hart drove some piles for you after you came here, in the year 1913, along a line marked on this map nearly parallel with the street? A. Yes, the outer row next to the street. Q. That is the outer row of the two rows next to the street? A. There are three rows there.

Q. Well, anyhow, the principal driving that he did was near the street? A. No, farthest from the street. There is a row of piles that isn't shown on this plan right next to the street; there is a row here (indicating) driven before I came here; these (in-

(Testimony of H. S. Worthen.)

dicating) represent what Mr. Hart drove, this row, the outer row of the three rows next to the street—he didn't drive any out here (indicating)? [88—20]

Q. Didn't he at some time drive out seaward to replace some others? A. No, sir. Q. When was that done? A. Mr. Webster did that. Q. After you came here? A. Yes, sir. Q. After you came here,

some piles were driven out on the seaward side of the boom? A. Commencing about here (indicating), these broke away that same season—nearly all of them broke away and went adrift and Mr. Webster's driver came in and replaced them; however, not the lower four; the lower four were not replaced that year. Q. Have they been replaced since? A. The lower one was replaced last fall. Q. Of the piles in the ground as they now exist, the lower one was driven last fall and some of the piles further towards the mill on the seaward side of the boom were driven a year or so ago? A. Those are what we call the dolphin piles driven in the fall of 1913. Those were to replace the ones that went out. We had a storm and a lot of them went out. Q. What time in the year was that? A. That was in the year of 1913. Q. Now, when you say that you cannot feed the logs from the channel side, you mean by that, Mr. Worthen, as I understand it, the general trend of the current is northward up the channel? A. I cannot tell—it comes this way towards town. Q. Of course, if you rely upon the current to bring the logs to the mill you have to have the logs so situated that the current will take them to the mill? A. When they

(Testimony of H. S. Worthen.)

are not in the boom the natural trend is from the mill; we have to pull them up at the lower end near the mill. Q. But the natural trend of the logs is up current toward the mill? A. Yes, sir. Q. So, having the logs in the boom instead of having them out in the center of the channel, it saves that much pulling getting them to the mill? A. Yes; of course logs would lay crosswise. Q. If they were lying crossways they would go with the current unless you had them made fast? A. Of course, the resistance is a great deal greater lying crosswise than it is lengthwise of the logs. Q. However, the log boom doesn't extend out to the center of the channel, does it? A. How is that? Q. The log boom doesn't extend out to the [89—21] center of the channel, does it? A. Oh, no. Q. Wherever you had your boom, you would have to run alongside of the shore so the current would be toward the mill—that is true, isn't? A. I didn't catch that last. Q. I say, your boom would necessarily have to be along the shore so that the logs would be fed from the current—would drive them towards the mill? A. That would be the practical way. Q. That is the way it is done, isn't it? A. Yes, that is the way we are doing it now. Q. The current, however, isn't very strong one way or the other, Mr. Worthen, there? A. No; not in close to the shore, inside of the dolphins. Of course, the nearer you get to the shore the less current there is. Q. And the current is not very strong if you get in the middle of the channel, is it? A. Oh, yes; there is quite a current in the middle of the channel.

(Testimony of H. S. Worthen.)

Q. Of course, there is more in the middle of the channel than there is towards the shore? A. Yes.

Q. The last two pictures introduced, Mr. Worthen, were taken on July 13th, 1913, and the other one on July 30th, was it not, of the same year? A. I am only testifying to that from memory and what is marked on the pictures; I cannot testify to the date; I never refreshed my memory by looking at anything.

Q. That is your recollection? A. Yes. Q. You are pretty sure of that being correct, July 13th, 1913?

A. Yes, sir. Q. Two of them the 13th, and one the 30th? A. Yes, sir. Q. The first picture introduced

being the one taken on the 30th, and the other two on the 13th? A. Not taken at the same time. Q.

Taken about two weeks apart? A. Something like that. Q. Now, Mr. Worthen, you are not a mining

engineer, are you? A. No, sir. Q. Now, as a matter of fact, after hearing the testimony of Mr.

Bradley and Mr. Kinzie you were more frightened than anything else when that injunction suit was

brought—you were more frightened than the facts really warranted? A. I don't think so. Q. Don't

you think now if you had it to do over again you wouldn't bring the suit at all, knowing as much

about the operations as you now do? A. I don't [90—22] think so; I still think I would do the same

thing. Q. You still think the stuff coming down from above hurts you? A. I still think the—

Q. Knowing what you know about the situation now, you know more about it now than you did at that

time, do you not? A. I have seen the way they

(Testimony of H. S. Worthen.)

changed their program and know more about what they have done than I knew what they were going to do. Q. That conversation you had about that water coming down was a casual conversation, wasn't it? A. Just as I repeated it here. Q. You paid no attention to it at the time? A. We were watching it all the time. Q. Said more in a joking manner than any other way, wasn't it? A. I didn't take it as a joke. Q. You didn't take it very seriously? A. I took it seriously enough to keep watch. Q. You didn't take it seriously enough to speak of it when the question was up on the preliminary hearing? A. I was not asked anything about it. Q. And you didn't think it was serious enough to inform your counsel of it at the time? A. I think I did—I won't say as to that. Mr. HELLENTHAL.—I don't think I care to examine any further.

Redirect Examination by Mr. RUSTGARD.

Q. At or about the time you commenced the first action, 1010-A, state whether or not there was a big slide there? A. Yes, sir, there was. Q. Describe to the Court about the behavior of that slide—how near it came to crushing some of the houses along Franklin Avenue? A. It let go, I would say, about two-thirds of the length of their operations to the east, about two-thirds of the way down the slide broke away and it came down just to the brink overlooking the houses on Franklin Avenue. Q. How much earth, approximately, would you say was in that slide? A. Oh, testifying from memory, I would say there was about 250 or 300 feet wide, and probably

(Testimony of H. S. Worthen.)

five or six hundred feet long; and anywhere from, I should say, 6 to 8 or 10 feet deep. Q. That stopped just at the brink of the hill overlooking the cabins along the side of Franklin Street? A. Yes, sir.

Q. And right above your log boom? A. Yes, sir.

Mr. RUSTGARD.—That is all. Q. (By Mr. HELLENTHAL.) That slide didn't hurt anybody, [91—23] did it, Mr. Worthen? A. No, sir; not

physically. Q. (By Mr. RUSTGARD.) Another question. Since that time they have built the mill on this property? A. Yes, sir.

Q. And they promised to continue to extend it—talk about extending the mill? A. I have heard that talked, but never to me.

Q. Now, at that place they are crushing quartz taken from the mines on the Alaska Juneau property up in the basin? A. Taken from the mine. Q. From the

mine of the company up in Gold Creek basin on the other side of the mountain? A. Yes, sir. Q. And

the tailings from that mill are now conducted along the flume where they wash the debris which you have already described? A. It is near the same location;

they have a new flume now. Q. And those tailings are washed into the sea at about where the fish-house is? A. They have been depositing them from the fish-house on south. Q. Further south on the beach?

A. Yes. Q. You have gotten the benefit of some of it? A. Yes; some of it. Mr. RUSTGARD.—That

is all. Mr. HELLENTHAL.—That is all. (Witness excused.)

[**Testimony of Edward Webster, for Defendant.**]

EDWARD WEBSTER, a witness recalled, having been previously sworn, testified on behalf of the Worthen Lumber Mills, as follows:

Direct Examination by Mr. RUSTGARD.

Q. Mr. Webster, this forenoon you testified to driving some piles for the Alaska Juneau near the fish-house and at the place you call the wharf, the same being a string of piles supporting the track. A. Yes. Q. Now, have you refreshed your memory as to the time when you drove those piles? A. I didn't look that up—I looked up when we started the wharf in there, this was along in the fall of the year; it may have been in June or July when we drove that line of piles out there. Q. What year? A. 1913. Q. This forenoon you said 1912, didn't you? A. I said I wasn't sure, yes, sir. It was 1913. Q. If you said 1912 this forenoon you were mistaken? A. Yes, sir. Q. What time did you start driving the piles for the main wharf marked on this map "Warehouse"? A. May, 1913. Q. That shaded portion marked "Warehouse,"—that is the main wharf where the Alaska Juneau is? A. Yes, sir. Q. That stands on the wharf? A. Yes, sir. The COURT.—When did you say you began that? [92—24] A. In May, 1913. Q. You finished driving the main wharf before you came up with your pile-driver in the direction of the fish-house? A. Yes; if I remember right we were over to the Island doing some work, and then came back on that piece afterwards. Q. That is, first you drove the main wharf marked "Warehouse"?

(Testimony of Edward Webster.)

A. Yes. Q. And after that yu went to the Island to do some work? A. We drove a line out here (indicating) for part of their track there, then we came back from the Island and tore out the line there (indicating), and went inside and drove the track, along in the fall of the year—this line here (indicating), and some piles went out from here and tore this part of the track out and we went in here and drove a line of piles outside here. Now, if I mistake not, it was in June or July, and they came out on us—the water was too deep—we couldn't hold them down—we changed it and Mr. Hart drove it in on this side. Q. That was after this litigation started that you drove these piles right straight out in the direction of the channel? A. I don't remember whether it was after that or not. Q. You don't remember? A. No. Q. But you know about the piles which were driven to support the track immediately southeast of the fish-house? A. Yes. Q. And at the corner where the float is now shown to be? A. Yes, sir. Q. That was some time in the summer of 1913? A. Yes; in the fall of 1913 or summer of 1913—we were there two or three different times on the work. Mr. RUST-GARD.—That is all I wanted you for, to correct the date. Mr. HELLENTHAL.—No questions. (Witness excused.)

[Testimony of Grafton Coleman, for Defendant.]

GRAFTON COLEMAN, a witness called on behalf of the Worthen [93—25] Lumber Mills, being duly sworn, testified as follows:

Direct Examination by Mr. RUSTGARD.

Q. Your name is Grafton Coleman? A. Yes, sir.
Q. You live in Juneau, Mr. Coleman? A. Yes, sir.
Q. How long have you lived in Juneau? A. I came here in the spring of 1911 and I have been here practically all the time except probably three or four months. Q. Do you remember when Franklin Avenue was built? A. I do. Q. That is, passed the sawmill down towards the city limits? A. Yes, sir.
Q. What time was that built? A. That was built in 1912—started work about the latter part of June—just the exact date, I don't remember. Q. 1912? A. Yes, sir. Q. The work proceeded from near the city and extended in a southeasterly direction? A. Yes, sir. Q. They commenced from the northwesterly end? A. Right close to the sawmill dock; yes, sir. Q. Proceeded to plank it—that was built by the city of Juneau? A. Yes, sir. Q. And from the end of Franklin Street at the limit of the city, the Government continued the road on to Sheep Creek? A. Yes, sir. Q. Where were you employed in 1912, in the summer? A. Worked for the Alaska Supply Company in the sawmill. Q. That is what was known as the Jorgenson Mill, the same mill as the Worthen Company operates now? A. Yes, sir. Q. Will you describe to the Court in what manner the sawmill was operated that season with reference to floating logs

(Testimony of Grafton Coleman.)

up here? A. It was operated about the same way it is now; they had the pond or pocket there—was piled in—and the logs were taken in at the lower end down by the fish-house and floated in endways. Q. Now, the log booms would be floated in along the beach into this pocket formed by the dolphin as an outer guard?

A. Yes, sir. Q. At that time, in 1912, was there any other obstruction in the water except the fish-house?

A. On this side of the fish-house they had a little grid-iron there. Q. That is for the purpose of placing

scows on, or boats, for repairs? A. Yes, sir; there were three fishermen there—they used to put their boats on there to be repaired. Q. That fish-house

was standing on piles? A. Yes, sir. Q. This grid-iron is three or four planks supported by piles, low enough to put a boat on [94—26] it at high tide?

A. Yes, sir. Q. This Alaska Juneau wharf was not there at that time? A. No, sir. Q. At that time there was a free ingress along the beach in from this mill-pond with the exception of that fish-house? A.

Yes, sir. Q. Nothing else? Do you remember the time when this planked platform on the southwest-erly side of Franklin Avenue was erected? A. Yes,

sir, approximately. Q. What time was it erected?

A. That was in the summer of 1913. Q. Did you work on that? A. No, sir. Q. Do you remember

when they started? A. Well, I don't remember the date; they started fixing up the mill, and when they had the mill almost completed they started on this and they worked on it right along—I don't remember what the time was. Q. Built it as fast as you got the

(Testimony of Grafton Coleman.)

lumber? A. Worked there practically all of the time on it—two men, and sometimes be off for a little while and then work again. Q. Until you were stopped? A. Until the injunction came up; yes, sir. Mr. RUSTGARD.—I think that is all.

Cross-examination by Mr. HELLENTHAL.

Q. Mr. Coleman, in 1912, you say there were no structures on the beach; you mean that, extending into the water—you know the old Chief Johnson house and the Jimmie Bean house, they were there, weren't they—I mean up on the upper part? A. Why, yes, there were a good many shacks along the street there. The COURT.—I didn't understand, Mr. Coleman, that you were asked anything about that. Q. Extending into the water is all you mean? A. Extending into the water is all. Mr. RUSTGARD.—The Worthen Lumber Mill rests.

ALASKA JUNEAU COMPANY'S EVIDENCE.

Mr. HELLENTHAL.—We will put in our record evidence first. (Whereupon was received in evidence Exhibit "A," which is a notice of location of Abe Lincoln Ledge, giving date of location as — and recorded —; Exhibit "B," certificate of location of Abe Lincoln Lode, which gives date of location as — and recorded —; Exhibit H.1. Location Notice of General Grant Lode, which shows claim was located in 1895. [95—27] Exhibits "C" to "S" inclusive, which show transfer of title from the original locators of Abe Lincoln and General Grant Lodes to the Alaska Juneau Gold Mining Co. These exhibits also show that prior to 1902, J. P.

(Testimony of St. Clair Johnson.)

Jorgenson Co. owned a quarter interest in said lode claims and in that year conveyed its one-fourth to plaintiff's predecessors in interest. They also show that Henry Shattuck owned a one-fourth interest in General Grant lode, which he in 1912 conveyed to plaintiff.)

[Testimony of St. Clair Johnson, for Plaintiff.]

ST. CLAIR JOHNSON, a witness called and sworn on behalf of the Alaska Juneau Gold Mining Company, testified as follows:

Direct Examination. By Mr. SIMON HELLEN-
THAL.

Q. What is your name? A. St. Clair Johnson. Q. You are living in Juneau? A. Yes, sir. Q. How long have you lived in Juneau? A. Well, I came here—I was down to Sitka before and when first strike Juneau I come over here. Q. You were over at Sitka first? A. Yes; I was living at Sitka first. My father used to be at Sitka and my mother, and then afterwards they strike Juneau and I come down here. Q. About what year was that—how long ago? A. Well, it was the time I come down here—I just begin to tell what I do first before I explain something else. I strike Juneau, and I go back to Sitka—Sitka Mission Home; as soon as I got out again I come again to Juneau and stay right here twenty-five years—Juneau. Q. Stayed twenty-five years in Juneau? A. Stayed twenty-five years in Juneau. Q. Do you remember the year that you left the Sitka school? A. It was 1888. Q. You have been in Juneau since that time? A. Since that

(Testimony of St. Clair Johnson.)

time in Juneau all the time. Q. You say you had been in Juneau before that time? A. Before that time I been in Juneau. Q. About the time the white men came? A. Yes; I been here at the start, then I went back to Sitka to school. Q. Did you know Chief Johnson? A. Yes, sir. Q. Do you know where he lived? A. I know, yes. Q. Did you know Chief Johnson's older brother? A. Yes; I know his brother. Q. Did you know Chief Johnson's older brother's wife? [96—28] A. Yes, sir; I know his wife. Q. Do you know Jim Johnson, Chief Johnson's younger brother? A. Yes, sir. Q. Do you know Tom Johnson? A. Tom Johnson, that young man? Q. Yes. A. I know him; he was a little boy when I come from Sitka. Q. Did you know them the first time you were in Juneau? A. Yes, sir. Q. You saw Chief Johnson living there the first time you came to Juneau? A. Chief Johnson lived down there at Taku on this side; and then as soon as they commenced to strike Juneau, he moved down to the beach down there. Q. Down near where the fish-house is? A. Yes, where the fish-house is at the beach there. Q. Was that the identical place he first moved to? A. Yes, all the time. Q. Where did Chief Johnson's older brother move to? A. Same place together. Q. Did he live this side of Chief Johnson or the other side of Chief Johnson? A. This side. Q. Do you remember what they were engaged in the first time you were in Juneau—what they did? A. No, sir. Q. You don't remember what they did? A. No, sir. Q. Do you know

(Testimony of St. Clair Johnson.)

Jackson? A. Yes, sir. Q. Did he live right near there? A. Yes, sir; he lived right there. Q. What way from Chief Johnson did he live? A. A little farther down this way. Q. Next to him, and just beyond? A. Yes; all the time. Q. Was he living there the first time you were in Juneau? A. Yes; and his father—his father used to be living there the first time, and he stayed there, too—his father stayed a long time. Q. When you came back from Sitka in 1888, these people were still living there? A. Yes. Q. Chief Johnson still living in the same place? A. Yes. Q. And Chief Johnson's oldest brother this side of Chief Johnson? A. Yes, together. Q. And Jackson lived on the other side? A. Yes; on the other side; Jackson and his father used to live there; his father until his father died, and he built a new house there. Q. When you came back from Sitka, what did Chief Johnson do, if you know? A. All I know, Chief Johnson stayed right there; he got stuff to sell all around, all over—he got a schooner and sent [97—29] them all around. Q. He was trading? A. Yes, trading; yes. Q. He had a schooner, you say? A. He had a schooner, because I seen it. Q. Where would he land with his schooner? A. Right in the place down on the beach—the tide-land. Q. Near where the fish-house now is? A. Yes, sir; where the fish-house is, tied up right there. Q. How long did Chief Johnson continue to do that? A. That is all—I told it that way, because I know where Chief Johnson stayed. Q. When you came here in 1888, was he landing there with his schooner? A.

(Testimony of St. Clair Johnson.)

Yes; his house right in there yet. Q. Did he continue to land there with his boat as long as Chief Johnson lived? A. Yes, sir; as long as he lived, what kind of boat he got he put in there. Q. How many boats did Chief Johnson have? A. First he have a schooner, then he ain't got that all the time; he keep the schooner not long—not much good, then after he sold it he got another one, a green one, green paint on it, and then he got a gas boat—gasoline—he ain't got that boat all the time—and he tied them up right there—his boats, because he lived there. Q. And what did the other Johnson do—what became of Chief Johnson's older brother, if you know? A. Together they stayed there. Q. Yes, and how long did Chief Johnson's older brother stay there? A. That is all I know, but Chief Johnson's brother stayed there—they moved out together, because they had to make garden—in that time it not like this time at all, because I know they belong to these people they have to clean up and make some little garden in there, but Chief Johnson got a good deal of business all around, but this man stay there all the time, he and his wife stay all the time and make a little garden. Q. That was Chief Johnson's older brother? A. Yes; and his wife. Q. Did he use the beach at all? A. Yes; he had to have boats, so he tied up there. Q. How long did Chief Johnson's older brother live after you came from Sitka? [98—30] A. Why, he had to live just as long as he lived there. Q. He lived there all the time? A. Yes, right at Chief Johnson's house. Q. Did his wife live there? A. Yes, sir. Q.

(Testimony of St. Clair Johnson.)

Did his wife continue to live there after he died?

A. Yes, and his other brother. Q. That is, after he died his younger brother came and married his wife?

A. Yes. Q. Is that Jim Johnson, the man you know?

A. Yes, sir. Q. Did they continue to live there? A.

Yes, his wife used to work there—she cleaned out ground and used to work around here because the man had to do something—fishing and that kind of work; sometimes they stayed there, and sometimes were out again, but the woman she used to be with her husband. Q. When they went out, did they go

on foot or in the canoe? A. In their canoes, and

when they came back again, tied up their boat on the beach. Q. Did Tom Johnson live there with them?

A. Yes; he was a little kid when I came. Q. Now,

do you know Jimmie Bean? A. I know him. Q.

Did Jimmie Bean ever have a house in that locality, or a place in which he lived right near there? A.

Jimmie Bean is there and his younger sister, and all his family is dead, and he puts them in the graves in

the other place, and that is the reason he went and claimed it; you see all the graves, that is the reason

he moved that and went up there. Q. That is the

reason he moved? A. Yes, sir. Q. And he claimed

the ground? A. Yes, sir. Q. Was that just this

side of Jim Johnson's house? A. Yes, sir; down on

the beach. Q. Now, while Jim was living there, did

he use the beach? A. He stayed there sometimes,

because I know what he is doing and he know what

he is going to do there just the same as all people, and

he got his friends all dead and laying in the graves,

(Testimony of St. Clair Johnson.)

and that is the reason he had all the ground. Q. He didn't let anybody come in this place—he didn't allow anybody to go in that place? A. No, sir; that is the reason he didn't allow nobody. [99—31] Q. About what time was that? A. Jimmie Bean and his brother have a house together. Q. Was that in 1888? A. Before I come. Q. Before you came here? A. Yes; they moved down here, that is the reason, as long as I go past I see them. Q. Did you see them when you came here the first time? A. Yes, sir; the first time I come here I see them. Q. And when Jimmie Bean would come and go, would he go with his canoe, and tie his canoe up there? A. Yes, sir. Q. Now, the Jacksons that you speak of—what use did they make of the upland—did they garden on the upland? A. Yes, right up a little further, up on the top of the house they used to make a little garden—Jackson. Q. Did they make any use of the beach in front of their house? A. Yes; they have to use it, because they had to have a boat tied up in the water many years. Q. The Jacksons were there when you came here? A. Yes, sir; the Jacksons were there. Q. Did they continue to live there a long time? A. Yes, sir. Q. Do you remember how long they continued to live there? A. Well, I will have to explain to you how I know about it. As soon as I come from Sitka, 25 days I stay in Juneau, I saw these people all the time I passed there—saw them right there; sometimes I call down there, and I could see the same people all the time whenever I go there—go past. Q. Do you know whether or not Mrs. Jackson

(Testimony of St. Clair Johnson.)

lived there until she sold to the Alaska Juneau? A. Yes.—Mrs. Jackson? Q. Yes. A. When? Q. Two years ago. A. Well, I heard that, but I couldn't keep track of her. Mr. HELLENTHAL.—That is all.

Cross-examination by Mr. RUSTGARD.

Q. How old are you? A. I couldn't catch the date, I couldn't tell you. Q. Have you ever heard how old you were? A. I was not born in Sitka, I was born at Haines. Q. Haines Mission? A. Yes, away up in Haines. Q. How many years ago? A. I couldn't tell you how many years ago I was born; cannot keep track of it. Q. From Haines, where did you go—where did you go after you left Haines Mission? A. My [100—32] father used to go up to Haines Mission, and I belonged to him, and that is the reason my father used to go up there; then I moved down to my father's home in Sitka. Q. How old were you when you went to Sitka? A. I couldn't tell you how old I am when I went to Sitka. Q. How long did you stay in Sitka before you came to Juneau? A. Oh, I left Sitka just as soon—I was a little kid, then, when I left. Q. How old were you when you came to Juneau first? A. Well, I guess about 15—I guess about 15. Q. When you came to Juneau the first time? A. When I came to Juneau the first time; I couldn't tell anything, I couldn't work. Q. How long did you stay in Juneau before you went back to Sitka again? A. Well, I stayed in Juneau about two years and I go back to Sitka. Q. When you lived in Juneau, at that time, where did you live? A.

(Testimony of St. Clair Johnson.)

Juneau? Q. Yes; where did you live—where did you and your father live when he had you here? A. Oh, Sitka. Q. When you were here, wasn't your father here? A. No, I come with somebody else. Q. Who did you come with? A. Of course, I come with many people—Indians—come to see Juneau. Q. Where did those Indians live when they came here with you? A. Right here at Gold Creek, right here in the village. Q. North of here? A. No, just here at Gold Creek. Q. Taku Village? A. No; Auk Village right at Gold Creek, where village is this time. Q. You went back to Sitka and went to school? A. Yes, sir; I went back to Sitka. Q. How long did you go to school there? A. I stayed there in the Mission about 5 years. Q. Who were running the Mission at the time—who was the teacher in charge of the Mission? A. The superintendent down there. Q. Mr. Kelly, the fellow with the long whiskers? A. Yes, sir. Q. And do you know what year you came back here from Sitka? A. I come back here in 1888. Q. How do you know that? A. Because I have to live that way. Q. You remember that? A. Yes; that is all I remember. Q. When you came back here to Juneau, where did you live? A. I lived right in Juneau. Q. In the Indian village here? [101—33] A. In the village. Q. Auk Village? A. Yes, sir; Auk Village. Q. Where are you working? A. Oh, all around; I work every place, I have to work every place, all around. The COURT.—He asked where are you working now? A. Why, yes, I work at the Alaska

(Testimony of St. Clair Johnson.)

Juneau. A. How long have you worked for them?

A. For quite a while—I worked there all the time, but this time I work about two years. Q. Been working for about two years? A. Yes, this time.

Q. Working down on the beach here? A. Sometimes work on the beach, sometimes work on the other side in the basin. Q. How many times have you been a witness for them in court? A. Never been a witness at all.

Q. Now, you talk about Chief Johnson—don't you know that Chief Johnson built a house farther up town? A. Yes, sir; a big house. Q. Didn't he move in and live there? A. Yes, he moved in the big house.

Q. What time did he build that big house farther up town here? A. I couldn't tell you what time he built that big house—when he built it I see it. Q. How long after you came from Sitka did he build it? A. When I first come from Sitka Chief Johnson stayed down in a little house, after he built his new house—this house up here—built a big house, and I saw him build it.

Q. How long after you came back from Sitka did he build the big house? A. I don't remember that at all, how long. Q. A year or two? A. Oh, four years, I guess, maybe four years—that new house there had just opened first. Q. That is, the big house here on the hill, two thousand feet further north from where he lived before that—north of the mill. That big house was north of the sawmill, wasn't it? A. These people know how to come. Q. You know where Chief Johnson's big house is? A. Yes, sir. Q. That is north of the sawmill, isn't it—northwest of the sawmill—this side of

(Testimony of St. Clair Johnson.)

the sawmill, isn't it? A. Yes. Q. And where he lived before is on the other side of the sawmill? A. Yes, sir; on the other side, right down there. [102—34] Q. When he moved into the new house, where did he tie his boat? A. He tied at the same place. Q. Tied them right in front of his house, didn't he? A. The other house way down. Q. After he moved into his new house, didn't he land his boat in front of his own house? A. No, sir; because down on the beach too rough, they have to keep out of the way all the way down. Q. Chief Johnson was away from home a good deal of the time, wasn't he? A. Yes, sir. Q. He sailed around and traded? A. Yes, sir. Q. Sold goods to the Indians? A. Yes, sir. Q. He had a house down at Taku, too? A. Yes, sir. Q. The little village there? A. Yes, sir. Q. Sometimes he stayed in that house? A. Yes; in that house, and then come back again. Q. Way down at Taku Inlet, Point Bishop? A. Yes, sir. Q. Did he have a house anywhere else? A. Yes, this house. Q. He would sometimes stay in his house here and sometimes at Taku Inlet—did he have a house in any other place—did he have a house in Hoonah? A. No; he had a house way down this side of Taku; he was going to build a house—big one, and after he started his working and cleaned out for big house, he drowned—he couldn't work it—he was going to move out of the big house out there, but he was too late, and he drowned. Q. He was going to take the other Indians down with him to that place? A. That place way down? Q. Yes. A. Well, first

(Testimony of St. Clair Johnson.)

he had his work to do before he told it to people what he is going to do, and he got to finish his work before he tell all his friends. Q. Now, where is Jimmie Bean now? A. Jimmie Bean up in the Taku River, trapping. Q. Trapping? A. Yes. Q. How long has he been gone? A. I don't remember that; I work all the time, I don't know where he go. Q. All the Indians were in the habit of going out trapping in the winter? A. Yes, sir; trapping in the winter. Q. Fishing in the summer? A. Yes, sir; fishing in the summer. [103—35] Q. And they used to have a house wherever they trapped? A. They don't have a house like this house here—a little shack or a cabin, sometimes. Q. Now, how long did Jimmie Bean live down there? A. Where? Q. Down at the lower end of town here? A. Jimmie Bean and his father they used to stay down there, as long as he come down from way back on the river—he stayed with his father right there—he used to stay with his father. Q. Jimmie Bean claimed all the graves up on the hillside there? A. Jimmie Bean used to be staying all the time with his father, and his father told him whenever your sister dies, or your brother, or anybody else, your friends, you bury them right there in the graveyard. You remember that—he told his son, “You remember that nobody must come around after it, to get this place,” and Jimmie Bean watched to see somebody didn't come around. And then down the beach he got a post like that there, and put that up on top of a little bit of a hill there—put that post there. Q. When did he put that post there? A. I

(Testimony of St. Clair Johnson.)

think it was pretty near two years ago. Q. Two years ago? A. Yes; one man worked there and put a post there. Q. That was at the time he knew he could get some money for it? A. Yes; because it belonged to himself. Q. Well, a good many of the Indians moved back there about two years ago to sell that ground, didn't they? A. This place? Q. Moved back there and wanted money for the graves and the ground, didn't they? A. I couldn't say that, because they knew that they do; they knew themselves what they do; they didn't move much, they stayed down there, and when the old house blew down, they moved to Douglas, the other side. Q. Now, how long did Jim Johnson live there? A. Jim Johnson? Q. Yes. A. Why, Jim Johnson, of course his brother used to live there—Jim Johnson's brother, just the same thing, and he lived there until his brother died, then he had to go alone again. [104—36] Q. That is, until Chief Johnson, you mean, died? A. Chief Johnson's oldest brother. Q. When did Jim Johnson start living down there? A. As soon as this man died, he have to pick it up. Q. How long has that been? A. I couldn't tell you how long. Q. Where is Jim Johnson—here? A. Jim Johnson right here in Juneau. Q. When did he move away from there? A. Jim Johnson? Q. Yes. A. Well, I couldn't tell you, but I remember that he used to live there. Q. His brother used to live there? A. Yes.

[Testimony of Tom Johnson, for Plaintiff.]

TOM JOHNSON, a witness called on behalf of the Alaska Juneau Gold Mining Company, being first duly sworn, testified as follows:

Direct Examination by Mr. SIMON HELLEN-
THAL.

Q. What is your name? A. Tom Johnson. Q. Where do you live, Tom? A. I lived right below the sawmill. Q. Where do you live now? A. I live in Douglas. Q. What was your father's name? A. His name was Johnson, a brother of Johnson. Q. A brother of Chief Johnson, was he? A. A brother of Chief Johnson. Q. Was he the elder brother of Chief Johnson? A. Yes, sir. Q. Your mother, who is she the daughter of? A. Mrs. Jackson. Q. Who is your mother living with now, since your father died? A. She is living with Jim Johnson now, the youngest brother of Chief Johnson. Q. Where did you live in Juneau? A. Oh, we live in Juneau—my family lived there about one year after they discovered Juneau. Q. Whereabouts did they live? A. Right below the sawmill. Q. Was that near the fish-house? A. Yes. Q. Which way from the fish-house? A. On the down side, on the town side? Q. Town side from the fish-house? A. Yes. Q. Was it right next to Chief Johnson there? A. Yes; the old house Chief Johnson used to have. Q. Was it just this side of him and adjoining him? A. Yes, sir. Q. How long did you live there? A. Well, that is what my family told me, they lived there one year after they discovered Juneau. Q. Do you remember yourself of liv-

(Testimony of Tom Johnson.)

ing there? A. At the time my father died I was about nine years of age—we lived there a couple of years, and then moved over to Douglas. [105—37]

Q. You lived there a couple of years after your father died? A. Yes, sir. Q. Did you continue to claim the property after you moved away. Mr. RUST-

GARD.—I object to that as incompetent, irrelevant and immaterial and leading. The COURT.—The

question is leading; I don't think it is material whether he continued to claim it or not. Q. About

two years after that you say you moved to Douglas? Do you remember about what year it was your father

died? A. Well, I am 28 years of age now; my father died when I was nine years of age. Q. That was

about 19 years ago then—did you have anybody looking after the property after you moved away? A.

Let my old grandmother look after it, Mrs. Jackson.

Q. Did she live near the property? A. She lived

right on this side. Q. Right on the other side of the Chief Johnson house? A. Yes; on the lower side.

Q. At the time you moved off of the property, was there a house on it? A. There was a house on it, and

later on they tore it down. Q. About how many

years after you moved out? A. I don't remember just the very date, because, you see, I was pretty

young; I know they tore it down; we had a garden out in front of our house, a little garden, and on this

side of the garden they had some kind of a shed for their canoes—my father used to keep a big canoe.

Q. You had a place there to keep a big canoe? A.

Yes. Q. Did you continue to keep that garden up

(Testimony of Tom Johnson.)

after you went to Douglas? A. No; we didn't do

anything on it. Q. Do you remember what use was made of the beach by Chief Johnson—you were acquainted with the Chief Johnson property as well, were you not? A. Yes, sir. The COURT.—You

mean the present Chief Johnson property? Mr. HELLENTHAL.—The Chief Johnson property lying alongside of the property he just testified to.

The COURT.—That is to say, where the fish-house was? Mr. HELLENTHAL.—Yes. Q. Do you remember what use Chief Johnson made of that property?

A. Where the fish-house is now? Q. Yes. A. Well, he used to keep his schooners there, that is all I

[106—38] remember. It used to be in the olden times they would put up a post in the place, the way they used to do, then if there was anything below your property supposed to clear it so you can keep your boat in there. Q. Did he have it cleared

away? A. He cleared away on the boat side. Q. What boats did he keep there? A. I don't remember;

he had one schooner before, and he got another one after it. Q. You saw these schooners there? A.

Yes, I saw them. Q. Did he continue to keep these boats there until the time Chief Johnson died? A.

He kept one schooner there all the time — black schooner, two masts on it. Q. Two-masted schooner

and kept it there all the time? A. Yes, sir. Q. What use did Jacksons make of their property, that you know of—your grandmother? A. On the beach side?

Q. Yes; the property that was just beyond Chief Johnson's property there. A. Yes; right next to

(Testimony of Tom Johnson.)

Chief Johnson's property. Q. On the other side of it? A. The lower side of it. Q. Did they make any use of their upland, or did they have a house up there? A. Yes; they had a house there. Q. Did they make any use of the beach? A. They used to have a canoe on the beach, too. Q. How long did your grandmother continue to live there? A. Well, I guess they moved at the same time as my family moved—of course, all in the one family, you see—and my mother tell me the way, you see—my mother and his mother moved there at the same time. Q. When did Mrs. Jackson move over there? A. As soon as the Treadwell Company bought it out, they moved away. Q. They lived there until the Alaska Juneau bought the property? A. Yes. Q. You don't remember how long ago that is? A. About two years ago. Q. Your grandmother lived there all the time? A. Yes; until two years ago, something like that. Mr. HELLENTHAL.—You may cross examine.

Cross-examination by Mr. RUSTGARD.

Q. You are 28 years old? [107—39] A. Yes, sir. Q. And your father died when you were 9 years old? A. Yes, sir. Q. At the time your father died you lived opposite where the fish-house now is? A. No; I mean at the time my father died I stayed there two years; after my father died, I moved to Douglas. Q. At the time your father died, where did you live? A. I lived in the house where my father died. Q. How far from the present fish-house? A. Right next to the fish-house. Q. Which side of

(Testimony of Tom Johnson.)

Chief Johnson's house were you? A. On the town side. Q. That house and Chief Johnson's house was right opposite from where the fish-house now is? A. Yes; right on the opposite side of it. Q. On the shore over there? A. Yes. Q. And you were on the town side of the Chief Johnson house? A. Yes, sir. Q. Now, you lived there two years after your father died? A. Yes, sir. Q. Your family moved away from there? A. Yes. Q. You had a small house at the time? A. Not very small. Q. But you tore it down a little afterwards? A. Yes; we tore it down—took it away. Q. How long afterwards? A. I don't remember; I was too young, you see. Q. You are pretty young yet? A. Maybe, my father—Q. Now, then you said you had a grandmother living there? A. What is that? Q. Did your grandmother, you say, live in the neighborhood? A. My grandmother was living on the other side of the Chief Johnson house. Q. That is down the channel from Chief Johnson's house? A. Yes. Q. What was her name? A. Her husband's name was Jackson. Q. Now, is your grandmother living now? A. Yes; she is still living now. Q. Where does she live? A. She lives in the other village on this side. Q. In the Auk Village in Juneau here? A. Yes, sir. Q. When did she move away from below town here? A. As soon as the Treadwell Company bought the land out she moved to Auk Village. The COURT.—By the Treadwell Company I understand he means the Alaska Juneau Company? Mr. HELLENTHAL.—Yes. Q. Do

(Testimony of Tom Johnson.)

you remember [108—40] Chief Johnson? A. Yes; I remember him. Q. How long since he died? A. He died when I was at school in Sitka. Q. How many years ago? A. 1904, something like that—1903; I don't remember it very well; I left Douglas for Sitka school in 1902, September 13th. Q. You went to Sitka in 1902? A. 1902. Q. You stayed how many years? A. Three years. Q. Was it during that time that Chief Johnson died? A. Yes; that time I was in Sitka Chief Johnson died. Q. About 1904 or '05, was it, he died? A. I think something like that.

[Testimony of Jimmie Johnson, for Plaintiff.]

JIMMIE JOHNSON, called as a witness on behalf of the Alaska Juneau Gold Mining Company, being first duly sworn, testified as follows:

Direct Examination by Mr. SIMON HELLEN-
THAL.

(Through Interpreter.) Q. What is your name? A. Jimmie Johnson. Q. Where do you live? A. I live at Douglas. Q. What is your business? A. He says he is not doing anything now, but in the summer time his business is fishing? Q. Did you ever live in Juneau? A. Used to live there a long time. Q. Whereabouts did you live? A. Used to stay with my father when he was living. Q. Whereabouts did you stay with your father? A. On this side of Chief Johnson's house. Q. Is that Chief Johnson's house on the upland right near where the fish-house now stands? A. The first

(Testimony of Jimmie Johnson.)

house he had? Q. The first house he had. A. Yes.

Q. Where was that with reference to the house known as the fish-house—was it near the fish-house?

A. Yes. Q. When did Tom Johnson's father first move there? A. The first time they come in here,

you see, the men discovered here; Chief Johnson and my father and Mr. Jackson and some other fellow, I don't know his name, they lived down there same place, and the fellow come around all the time

and he tell them they can move any place they want, pick up ground for themselves, so they moved down there; they took that place, Chief Johnson, my father and Mr. Jackson and the other fellow—I don't know his name, there were [109—41] four

of them took that place. Q. When was that—before or after Juneau was first struck, or was it at the same time Juneau was struck? A. It was one year

after they discovered Juneau. Q. Now, Tom Johnson's father is your brother, and is sometimes referred to as Chief Johnson's older brother, isn't he?

A. Yes. Q. How long did Chief Johnson's older brother continue to live there? A. Well, as long as

he took up that ground he lived there until he died; he had not been in a house any place else but that place. Q. Did his wife continue to live there? Mr.

RUSTGARD.—Whose wife are you talking about?

A. Chief Johnson's older brother's wife. A.

Where, down there? Q. Yes. A. After he died?

Q. Yes. A. Yes. Q. Did you live there at any time after that time? A. Yes, he says he lived

there about two years after Tom's father died, then

(Testimony of Jimmie Johnson.)

he moved to Douglas. Mr. RUSTGARD.—Whom do you mean by my father—is that the father of the witness? Mr. HELLENTHAL.—No; two years after Tom's father died. Q. What did you do after you moved to Douglas with regard to that property? A. Worked in Glory Hole after they moved to Douglas. Q. Did you do anything with your property—after you moved, with this property just this side of Chief Johnson's house, after you moved to Douglas? A. Mrs. Jackson—Mr. Jackson and his wife looked after it for him. Q. Who was this Mrs. Jackson—did she live near there? A. Yes; she lived there right close to Chief Johnson's house. Q. Was it the other side of Chief Johnson's house? A. On the other side. Q. How long did Mrs. Jackson live there? A. Mrs. Jackson and Mr. Jackson lived there until the Alaska Juneau bought it out. Q. Who was Mrs. Jackson—was she any relation to you? A. Mrs. Jackson is my wife's mother. Q. Is your wife the mother of Tom Johnson? A. Yes, sir. Q. Now, when did Mrs. Jackson first move on that property? A. What property do you mean? Q. On the other side of Chief Johnson. A. You mean when he moved on it first? Q. Yes. A. Well, that is what he told me before; they lived down here as long as the fellow came along and told them to pick up [110—42] a piece of ground for themselves—that time they moved down there, they picked up the ground. Q. That was about a year after Juneau was first struck? A. Yes; it was one year after Juneau was struck. Q. That was the

(Testimony of Jimmie Johnson.)

same time that Chief Johnson moved there? A.

Yes; they all moved there at the same time. Q.

Now, what use was made of the beach by Mrs. Jackson, and her people during the time that she lived there? A. They used to have canoes, and the

way the Indians used to do in olden times, they used to clear the beach so they can keep the canoes—a canoe is a pretty easy thing to crack if anybody leaves it on the rocks; they used to clear the beach away. Q. What use did Chief Johnson's older

brother make of the beach? A. He cleared his beach away from the place he used to have, and built a canoe shed on it, on the town side of the garden, on this side, and they cleared a space away so he could pull up his canoe there. Q. He said he had a canoe shed on it the side towards town from the garden?

A. The canoe shed was on the town side. Q. What use did he make of the beach during the two years that he lived there—what did he do with the beach during the two years? A. You see, before he move

over to Douglas he had some posts on that property—that is all he had there. Q. Whereabouts did you

put those posts? A. Put a post just right from the canoe shed and the other corner of the house, where he put the posts. Q. What did Chief Johnson do with

the beach in front of his house? A. He say he used to clear his beach, too, so he could keep his schooners there—he had two schooners; after he died one laid on this side of the sawmill, and it laid there until the tide drifted it away over there. Q. He says one continued to lay there until after he died? A. Yes.

(Testimony of Jimmie Johnson.)

Q. And stayed there until after he died, and then the tide drifted it away? A. Yes.

[Testimony of Mrs. Fannie Johnson, for Plaintiff.]

Mrs. FANNIE JOHNSON, a witness called on behalf of the Alaska [111—43] Juneau Gold Mining Company, being first duly sworn, testified as follows;

Direct Examination by Mr. SIMON HELLEN-
THAL

(Through Interpreter.) Q. What is is your name? A. Fannie Johnson. Q. Are you the wife of Jim Johnson? A. Yes. Q. And before you lived with Jim Johnson, you were the wife of Chief Johnson's oldest brother? A. Yes. Q. Are you the daughter of Mrs. Jackson? A. Yes. Q. Where are you living now? A. Douglas. Q. Have you ever lived in Juneau? A. The first time we used to live in Juneau. Q. When did you first come to live in Juneau? A. One year after they struck Juneau. Q. Where did you live in Juneau at that time? A. That is the place right there, below the sawmill. Q. Do you know where the fish-house is? A. Yes; she know. Q. Do you know where the place is they call Chief Johnson's first house, just upland from the fish-house? A. She knows. Q. The place you live there, was that near Chief Johnson's first house? A. She used to live on the town side of Chief Johnson's house. Q. Do you know when Chief Johnson first moved to the place called Chief Johnson's first house? A. Yes; she know. Q. Was that before or after they moved to the place that she just said they moved to? A. What do you mean, Chief Johnson?

(Testimony of Mrs. Fannie Johnson.)

Q. Yes; did Chief Johnson move there at the same time? A. One year after they moved there, Chief Johnson moved in too. Q. One year after Juneau was discovered? A. Yes. Q. Who lived on the other side of Chief Johnson's? A. My mother. Q. Mrs. Jackson? A. Yes. Q. When did she move there? A. Same time they moved. Q. How long did Mrs. Jackson continue to live there? A. She say her mother lived there until the Alaska Juneau bought the ground. Q. Now, ask her if I understand correctly—she says that Chief Johnson, she, and Jackson all moved there at the same time? A. She said they moved at the same time. Q. How long was that after Juneau was discovered? A. One year after Juneau was discovered. Q. One year after the camp was struck? [112—44] A. Yes. Q. What did they do, did they build any houses on their ground at the time they moved there? A. They put up the house and she put a little garden in the front. Q. How long did she live there? A. She lived there until her husband died, my father. Q. How long did you live there after your first husband died? A. Two years ago moved to Douglas. Q. What did you do with the property after you moved away? A. Says the ground was there and the canoe shed was there—used to have a shed to keep the canoe in. Q. A canoe shed was there? A. Yes, sir. Q. What use did you make of the beach during the time you lived there? A. Said they used to clear the beach away so the canoe would not crack—if anything drifted on the beach they used to clear it up. Q.

(Testimony of Mrs. Fannie Johnson.)

What use did Chief Johnson make of the beach?

A. Says Chief Johnson cleared the beach, too, so he could keep his schooners there. Q. Did Chief Johnson

keep his schooners there? A. Yes; he keep the schooners there. Q. What use did Jackson make of

the beach—what did they do with the beach? A.

They used to—Jackson cleared his beach away too—they used to have a big canoe, too.

Cross-examination by Mr. RUSTGARD.

Q. When did you say you moved away from that place? A. From where? Q. What time did you

move away from that place down on the beach? A.

Down here you mean, the other place? Q. Yes; this

place she talks about in her testimony, near the old

Chief Johnson house. A. The time she moved? Q.

Moved away from there. A. Two years after her

husband died she moved to Douglas. Q. Her first

husband died 19 years ago? A. Yes. Q. And two

years after that she left this place? A. To Douglas.

Q. Went over to Douglas? A. Yes. Q. And you

have been living there since? A. She says my

mother live there and come over once in a while to

see his mother. Q. What time did you tear down

the house? A. She says the wind took it down, and

took it apart—the wind blew it [113—45] down

first, and they took it apart. Q. The wind blew

down the house first and then you took it away?

A. Yes, sir. Q. How long was that after you moved

away from there? A. She thinks it is about five

years after we moved to Douglas. Q. Now your

mother lived on the other side of Chief Johnson's

(Testimony of Mrs. Fannie Johnson.)

house, didn't she? A. Yes. Q. Further down the channel? A. Yes. Q. Where did you come from when you came to Juneau? A. She said they lived around here all the time. Q. Where were you born? A. You know that village right out there (indicating)? Q. You mean down at Point Bishop? A. On this side of Point Bishop. Q. At Taku Inlet? A. Yes; that is where she was born. Q. What is the name of that village? A. I don't know. Q. Don't know the English name of it? A. Don't know the English name of it. Q. That is where Chief Johnson came from, too, isn't it? A. Yes; same place. Q. Chief Johnson and your mother and father had a house down there at Taku when you moved up here, didn't you? A. No; they have got no house. Q. Did they have one at the time they came to Juneau first? A. They come in here before she is married to my father. Q. Where did your first husband come from? Come from Taku. Q. Did he have a house down there at the time he moved up to Juneau? A. Which place do you mean, down there? Q. Yes. A. There was no house there then when they moved there. Q. Were there any houses at Taku when they came to Juneau? A. Oh, you mean Taku? Q. Sure, I am asking if there were any houses at the village in Taku at the time these people moved to Juneau. A. The houses you see—the houses there—is where they used to live, the Taku Indians. Q. The houses are there yet? A. Yes. Q. After you moved up to Juneau did you go sometimes and live at the Taku Inlet house—the Taku Village houses?

(Testimony of Mrs. Fannie Johnson.)

A. Said they don't go back there any more—they stayed here for work, so they can work here. Q. Did you never go down to the Taku Village after you came to Juneau first? A. She [114—46] never go back. Q. Never been there since? A. Yes. Q. Have you never been to the Taku Village since you left there and came to Juneau first? A. Used to go up to Taku past that village—that is all she knows. Q. Past it? A. Past Taku and get some fish up there. Q. How far is it from Juneau to that old village at Taku Inlet? A. She don't know how many miles.

Plaintiff then introduced in evidence: Location notices of A copy (attached exhibit "T"), L. & G. millsites; Deeds to plaintiff for A. (copy attached Ex. "V") L. & G. Millsites from the locators thereof.

Mr. HELLENTHAL.—I now offer deeds from Jimmie Bean, as an individual, and as chief of the Taku Tribe of natives, to the Alaska Juneau Gold Mining Company for a piece of upland therein described. Mr. RUSTGARD.—I object to that as immaterial, irrelevant and incompetent, and there being no evidence that Jimmie Bean, either as an individual or as Chief of the Taku Tribe, was seized or possessed of any land involved in this controversy. The COURT.—The objection will be overruled. (Whereupon said deed was received in evidence and marked Alaska Juneau Company's Exhibit "X.") (This exhibit purports to convey what is delineated on exhibit "Y" as Lot B, and copy of which is hereto attached.)

[Testimony of P. R. Bradley, for Plaintiff.]

P. R. BRADLEY, a witness called on behalf of the Alaska Juneau Gold Mining Company, being duly sworn, testified as follows:

Direct Examination by Mr. JACK HELLENTHAL.

Q. Your name is P. R. Bradley? A. Yes, sir. Q. You are the general superintendent of the Alaska Juneau Gold Mining Company? A. Yes, sir. Q. You are familiar with the operations of the company? A. Yes, sir. Q. And have been familiar with its operations for some time past? A. I have. Q. You are familiar with the property in controversy in this case? A. Yes, sir. Q. You know where the fish-house is? A. Yes. Q. And the tract of land immediately this side of the fish-house? A. Yes. [115—47] Q. You are familiar with what is known as the Jorgenson Mill? A. Yes. Q. You know where the townsite of Juneau is? A. Yes, sir. Q. And where the Abe Lincoln and General Grant Lode Claims are located? A. Yes. Q. Also where the Jorgenson sawmill log boom is? A. Yes. Q. And the Alaska Juneau wharf and other structures in that vicinity? A. Yes. Q. I direct your attention now, Mr. Bradley, to exhibit No. 1, and ask you if you can take a scale and place on that the Jorgenson thousand-foot reservation that has been referred to, and that is described in the deed which has been offered in evidence, showing where it would come to? The COURT.—Well, now, Mr. Hellenthal, there is a scale on the map and I can do that myself, I don't need Mr. Bradley to do that, I can measure

(Testimony of P. R. Bradley.)

it myself. Mr. HELLENTHAL.—I know you can, Judge, but there might be some difficulty in getting it measured right, and an engineer can get it measured more accurately and quicker than one who is not an engineer. A. The position of the thousand feet would be measured 20 inches from a point 555 feet south of corner No. 4 marked on the map. Q. That is, 555 feet to the commencement of it and—A. Twenty inches from that point would scale a thousand feet. Q. I wish you would just mark there—draw a line at the point where the thousand feet would commence, 555 feet from the corner—now draw a line across. (Witness draws a line in red pencil.) Q. Mark it with the letter A. (Witness does so.) Q. The red line marked with the letter A is the northernmost end of the thousand-foot reservation as described in the deed? A. Yes, sir. Q. Now, mark the most southern end of the reservation with a red line and mark that with the letter B. (Witness does so.) Q. Are you familiar with the piece of ground lying between the southernmost end of the red line—that is to say—the southernmost end of the Jorgenson reservation indicated by the red line marked with the letter B, and the fish-house, shown on exhibit 1? [116—48] A. Yes. Q. I wish you would tell the Court what, if anything, you expect to do with that ground? A. That ground was planned to be used in connection with the future operations of the Alaska Juneau Gold Mining Company. As soon as the construction work starts on the new program, it is proposed to erect a mill of

(Testimony of P. R. Bradley.)

8,000 tons day capacity. Q. That is the unit that will be immediately constructed? A. Yes; the construction of a mill of such capacity. Mr. RUSTGARD.—I think I will object to that as immaterial and irrelevant, and as having no bearing on the right of possession of the property below the street. The COURT.—Is this question directed to what he is going to do with the upland? Mr. HELLENTHAL. Yes. The COURT.—Objection overruled. Q. The Alaska Juneau Gold Mining Company has a mine in Silver Bow Basin? A. Yes. Q. About how large a mine is that—about how many claims? A. There is a group of 90 claims, approximately 90 claims, more or less. Q. What is the character of the ores, just in a general way, Mr. Bradley. A. The ore body is technically described as a slate formation; in other words, it is a mass of slate impregnated with quartz stringers through it for about 900 feet. Q. The width of it is approximately 900 feet? A. Yes. Q. And what is its character with reference to being high or low grade? A. It is low grade. Q. Such that it has to be worked on a very large scale in order to make it profitable? A. Yes. Q. How much money has been expended in connection with new development work irrespective of the mine value—the work that has been done there from 1910—in 1910 you commenced the surface work in connection with your new development work, did you not? A. Yes. Q. How much money have you expended in that development? A. One million, eighty thousand dollars. Q. That is besides the property

(Testimony of P. R. Bradley.)

you have acquired? A. Yes. Q. Now, Mr. Bradley, you know where the A millsite, and all this group of millsites of the Alaska Juneau are, situated near Gastineau Channel? A. Yes. [117—49] Q.

What are they to be used for, in connection with what property? A. They are to be used for the purposes

of building mills and also for the purpose of building all other structures necessary for the milling and refining of the ore. Q. The milling plant which is

to be used in connection with the mines in Silver Bow Basin is to be constructed on those millsites?

A. Yes. Q. The A and L millsites form part of a group of millsites? A. Yes. Q. And cover the

same ground, practically, that the Abe Lincoln and General Grant cover, and also are covered in part by some Indian titles which you purchased? A.

Yes. Q. What have you done up to date in the way of mill construction on these millsites? A. Up to

date we have constructed a fifty-stamp mill, which is considered a pilot mill for the investigation of milling operations in general to guide us in the construction of our future plants. Q. What have you done

in the way of connecting the mine with the millsite?

A. We have connected the mine with the millsite by a tramway approximately 10,000 feet long, which consists in part of trestles and in part of tunnel work. Q. And the cost of this tramway and the

work you have done on the millsite is in excess of a million dollars? A. Yes. Q. You have built some

other structures on the millsite besides the mill?

A. Yes. Q. What are they in a general way? A.

(Testimony of P. R. Bradley.)

We have built an office, carpenter shop, warehouse, heating plant, dormitories, storehouse, gravel bunkers, and various other mill buildings. Q. I direct your attention to a map that purports to be a map of the Abe Lincoln and General Grant claims, and also has a large number of other things on it, and ask you to look at that and state if you are familiar with it? A. Yes; I am familiar with the property embraced in this map. Q. Does that map properly show the things delineated [118—50] upon it? A. To the best of my knowledge and belief. Q. You are familiar with the things, shown thereon, in a general way? A. Yes. Mr. HELLENTHAL.—I offer it in evidence. Mr. RUSTGARD.—I would like to ask a few questions before it is put in evidence. Mr. HELLENTHAL.—No objection. Questions by Mr. RUSTGARD. Q. The present mill is not shown here, is it? A. No; the present mill isn't shown here. Q. This oil tank, is it on the ground? A. No; that is an oil-tank site. Q. Is this place called "Turbo Electric Power Plant" on the ground? A. The Turbo Electric Power Plant is not there. Q. Nor is the oil tank? A. No. Q. You didn't make this map yourself? A. No; I believe that map was made by Mr. Stewart. Q. This map doesn't show the houses situated across the street from the sawmill, nor along up the side of the street? A. No. Mr. RUSTGARD.—I object to the competency of this map under the circumstances. Questions by Mr. RUSTGARD.—Q. What does this 19 represent close to the fish-house? A. I don't

(Testimony of P. R. Bradley.)

know what that represents. Q. What is meant by these places off from the beach marked "Mill, Mill, Mill"? A. Under the original program those were sites located for three individual units. Q. They are not built yet? A. No, they are not built. Q. They represent that you may build on them? A. That we propose to build on them. Q. Now, these letters A and B, what are they? (No answer to last question.) Mr. RUSTGARD.—I object to the evidence as incompetent. The COURT.—Well, it just depends, of course, what it is offered to show; if it is offered to show what they propose to do—where they propose to put these things, I think it would be admissible; if it is offered to show the condition of things it would not be admissible. What do you offer it for, Mr. Hellenthal? Mr. HELLENTHAL.—Simply to show where these things are [119—51] to be placed; it shows the ground and marks the place where these particular improvements are to be placed, so the Court can understand it. The COURT.—Very well; with that understanding I will overrule the objection. (Whereupon said map was received in evidence and marked Alaska Juneau Company's Exhibit "Y," and is hereto attached.) Q. Now, I direct your attention to exhibit "Y," and ask you to step up here to the blackboard and explain that whole map to the Court, the various things that are shown upon it, commencing now, for instance,—the sawmill shown here is on the ground now? A. Yes. Q. The street there, called the Government Road, that is on the ground now? A.

(Testimony of P. R. Bradley.)

Called the City Road—that is on the ground. Q. Running from the sawmill to the Alaska Juneau wharf? A. Yes. Q. The Alaska Juneau wharf, is that shown there—is it marked the Alaska Juneau wharf? A. The Alaska Juneau wharf is here, but it is not marked Alaska Juneau Wharf; it is marked warehouse—it is at the point marked warehouse. Q. Warehouse on the extreme right of the map? A. Yes. Q. Now, going from that to the left, what is the next thing shown here? A. The next thing shown is the salt water pump; it is a pump placed on the float in order to pump salt water to the mill when the fresh water fails in the winter season. Q. Is that marked there? A. It is marked “Salt Water Pump.” Q. What is the next thing shown? A. The next thing shown that is on the ground is the railroad tract running from the wharf up to a point near the float. Q. Is the float shown? A. The float is shown. Q. It is marked float? A. Marked float. Q. What else is shown in that vicinity? A. The railroad track is continued across here as it is on the ground, and back in this direction as it is on the ground. Q. Back towards the wharf? A. Back towards the wharf. Q. All those things you have testified to are on the ground? A. Yes. Q. The warehouse on the wharf, is that on the ground? [120—52] A. Yes. Q. And the float is on the ground? A. Yes. Q. The tramway up the hill there? A. This tramway up the hill is on the ground. Q. Is that marked there? A. It is marked “Incline Tramway.” Q. That has been constructed

(Testimony of P. R. Bradley.)

and is on the ground? A. Yes. Q. What is next?

A. The next thing that is marked is the Alaska Juneau stable; that has been burned down. The next thing marked is the warehouse; that is on the ground. The next thing shown is the gridiron, but it is not marked as such. Q. Mark it gridiron, please.

(Witness does so.) Q. Now, what is the next thing shown? A. The next thing that is shown as on the

ground is a dwelling house on Lot No. 2. Q. There are a great many buildings on the ground in that vicinity that are not on the map? A. Not shown

at all. Q. Many improvements you have placed

there? A. Yes. Q. Now, coming to the place

marked "Turbo Electric Power Plant," is that on the ground? A. The Turbo Electric Power plant

is not on the ground. Q. And the oil tank, is that on

the ground? A. It is not on the ground. Q. Why?

A. The Turbo Electric Power plant is the site selected to build a power plant to supply the Alaska Juneau mill operations. The oil tank location was located at this point to construct a tank containing 30,000 gallons of fuel oil to be consumed in that power plant; in connection with the Alaska Treadwell operations, it was decided last summer to build an additional power plant, and it became quite evident that the most economical thing to do was to install this machinery which was already purchased and lying on the ground, in the same house on Douglas Island with the additional power plant of the Alaska Juneau, to be operated by the same operators, in the same power plant, thereby saving money

(Testimony of P. R. Bradley.)

for both concerns. Q. That is a temporary arrangement made last fall? A. Yes. Q. Where is the site for the permanent power plant? A. This power plant site is still available. Q. What was done in the way of grading or improving this ground? A. there [121—53] was a great deal of filling-in of the low ground and a great deal of excavating on the high ground. Q. You have worked over all of that ground in that vicinity? A. Yes. Q. And you have placed some structures on the ground that has been filled in in that neighborhood? A. Yes. Q. Now, about the coal-bunkers, where do you expect to put the coal-bunkers? A. The coal-bunkers would have to be placed immediately in front of the power plant; they could be placed elsewhere, but the transportation of the coal would make any other scheme most costly; the logical place to put the bunkers is as near the power plant as we can get them. Q. Is the lower end of the Jorgenson reservation shown on this map? A. It is shown in green. Q. Now, what use do you intend to make of the ground lying between the lower end of the Jorgenson reservation and the fish-house—what use do you want to make of it, in the first place, in connection with the power plant? A. We will establish a wharf there for the receiving of coal, and on this wharf would be built coal-bunkers. In connection with a milling plant of the magnitude of 8,000 tons a day capacity there is a tremendous amount of material to be handled—iron work, steel work and machinery of all kinds must be gathered together and assembled

(Testimony of P. R. Bradley.)

so it can be handled in proper order and proper sequence. The yarding of such material requires a considerable area which must be perfectly level to facilitate the handling and assembling of the various equipment and structural materials to be used. Q.

You intend to build a wharf covering that area, to be used in that connection, in the immediate future?

A. Yes. Q. Where is the unit of 8,000 tons—the 8,000 ton unit to be built? A. Approximately on the

most westerly site marked “Mill.” Q. Instead of building three units at the present time, there will be one unit of 8,000 tons capacity to be constructed at once? A. Yes. Q. And other units to be added

later on? A. Yes. Q. And it is in connection with the construction of that mill that you intend to land

the material on the [122—54] wharf of which you have just testified? A. Yes. Q. Is there any other

available space for that purpose? A. There is a small amount of space between the two points marked

warehouse, but we have not considered that, because it alone is not sufficient. Q. It alone would not be

sufficient? A. Yes. Q. What, if anything, has the Alaska Juneau Company done in the way of raising

money to carry on this construction work about which you have just testified—how much have they

raised, if anything? A. They have raised 4,000,000 dollars. Q. \$4,000,000 for that purpose? A. Yes.

Q. I think you have already stated that as soon as you can get around to it you intend building a wharf

to cover that area, to be used in that connection? A. Yes. Q. Do you know Mr. Robert A. Kinzie? A. I

(Testimony of P. R. Bradley.)

do. Q. Do you know Mr. F. W. Bradley? A. I do.

Q. Do you know Mr. John H. McKenzie? A. I do.

Q. Where are these gentlemen now? A. Mr. F. W. Bradley and Mr. J. H. McKenzie are in San Francisco, California; Mr. Robert A. Kinzie, to the best of my knowledge and belief, is also in San Francisco. Q. None of these gentlemen is in the Territory of Alaska?

A. I know that Mr. Bradley and Mr. McKenzie are in San Francisco. Q. If Mr. Kin-

zie was in Alaska you would be quite sure to know it, wouldn't you, Mr. Bradley? A. I think I would be *quite to* know of it. Q. To the best of your

knowledge he is in San Francisco? A. Yes. Q. Do you know anything about these Indian lots, where they lie—do you know where the Jackson, Johnson and Bean lots are, where they lie? A. I can refer to

this memorandum. Q. Where is the Jimmy Bean lot located on this map, Mr. Bradley—how is it indicated on this map? Mr. RUSTGARD.—I shall object to that specifically because it seems to me the most competent evidence would be that of the surveyor. Mr. HELLENTHAL.—That is probably

true, Mr. Rustgard, but they are indicated on the map and Mr. Bradley can show which they are. The

COURT.—Of course, anybody would be competent to testify to it that knows it; if he knows he can testify, if he don't he can say so. A. The Jimmie Bean

lot is marked here as lot B. Q. Lot B on the map is the Jimmie Bean lot. A. Yes. Q. Now, how is the Johnson lot indicated? A. That is the lot

marked lot 1 on the map. Q. That is [123—55]

(Testimony of P. R. Bradley.)

one of the Johnson lots; now, how is the Chief Johnson indicated? A. I cannot say which is the Chief

Johnson lot. Q. There are two Johnson lots, aren't there? A. I cannot say that there are two Johnson

lots. Q. Do you know what lot No. 2 is, Mr. Bradley? A. That is the fish-house lot. Q. Do you

know what lot No. 3 is—have you got that marked there? A. John Jackson. Q. Here, Mr. Bradley, is

a deed from Jimmy Bean—look at that description in that deed and see if that tallies with the lot marked on the plat as lot B? Mr. RUSTGARD.—

I object to that as not the best evidence and as calling for a conclusion; the deed speaks for itself and so does the map. The COURT.—I think the objection that the witness has not been qualified will be

sustained. Q. You are a surveyor, aren't you, Mr. Bradley? A. Yes. Q. You are able to check that

description and plat it on this map, are you? A. Yes. Q. And you are able to tell whether that description

tallies with lot B, as indicated on the map, aren't you? A. From a surveyor's point of view, no; be-

cause there are no bearings given on this map. Q. What do you need to check that? A. I would need

a north point. Q. Is there no north point given there? A. Or any angle at all. Mr. HELLEN-

THAL.—The reason I am doing this is because Mr. Stewart is not here, and I wanted to facilitate the

matter, is all. The COURT.—I know, and you would be permitted to do it if no objection had

been made. Mr. RUSTGARD.—I will say, if it is only for the purpose of identifying the description

(Testimony of P. R. Bradley.)

in the deed, I will waive all objections, because it is simply a matter of facilitating the whole evidence; but if it is for the purpose of proving up on these Indian titles, of course, I will object to it. The COURT.—Very well; under that statement you may proceed. Q. State whether or not the property described in that deed is the same as the plot indicated on exhibit “Y” as lot B? A. This will take some time. Q. Then we will skip it over and call some other witness while you do it. Will you take your pencil and mark in a rough outline on this map the point where the wharf is to be built which you intend to use for unloading this construction material, and which you intend to use for the other purposes to which you have testified, in red pencil, [124—56] and write the words “Proposed Wharf” on there. A. The depth of the wharf will be determined, of course, by the depth of the water. Mr. HELLENTHAL.—You may cross-examine.

Cross-examination by Mr. RUSTGARD.

Q. What time did you come to this part of the country? A. A year ago last month. Q. Hadn't been in Alaska before? A. No, The COURT.—I think we will suspend for ten minutes. Mr. HELLENTHAL.—Mr. Bradley has been checking up these Indian lots, and I will ask him about them. Q. Did you check up that Bean lot on the map? A. The lots marked A and B check up in accordance with the description given in the deed. Q. The deed covers both lots A and B? A. Yes, sir. Q. The two lots then, A and B, as indicated on the map, exhibit

(Testimony of P. R. Bradley.)

“Y,” are both included in the Bean deed? A. As per the description in the deed. Q. Did you check up the other lots, 1 and 2? A. No. Q. The description in the deed marked exhibit “Y” embraces both lots A and B as platted on exhibit “Y”? A. Yes, sir. Mr. HELLENTHAL.—That’s all.

Cross-examination by Mr. RUSTGARD.

Q. Now, Mr. Bradley, you don’t [125—57] know anything about those Indians who gave those deeds yourself? A. No; I had no personal dealings with them. Q. You don’t know whether they ever lived there or not? A. No. Q. You don’t wish to testify that they owned the property and had a right to convey it? A. No; I don’t know that of my own knowledge. Q. All you mean to testify to is that those marks on that plat, exhibit “Y,”—that those lines delineated on the map correspond with the description in these deeds? A. Yes, sir. Q. And that is all you mean to testify to? A. Yes. Q. Now, regarding those improvements on the ground, the place designated “Oil Tank” you have already explained is not on the ground? A. No; the oil tank is not on the ground; there has been some grading done at that point. Q. Do you expect to put an oil tank there now? A. Oh, I expect in the course of our future operations we will be compelled to put an oil tank there. Q. When did you conceive of putting the oil tank there? A. That was conceived in the original program; it was planned before I came upon the ground; the oil tank was bought, purchased and placed at that point. Q. That site is a considerable

(Testimony of P. R. Bradley.)

distance above your flume line carrying the debris from the mine? A. No, below. Q. Runs through and over it—that site is over where your tailing flume now runs? A. Yes. Q. And you mean to say that you have done any grading at that point? A. Yes; at the time the material was placed down there we started grading; I think there was \$150.00 charged out for grading the oil site. Q. One hundred and fifty dollars? A. Yes; that is my impression. Q. How long has that been? A. That was prior to my arrival here, a year ago last March. Q. That was prior to the time when the preliminary hearing was had in this case, was it? A. It must have been, because that was before I arrived. Q. The same is true of the place called “Turbo Electric Power Plant”—no grading had been done there, had there? A. At what time? Q. At this time? A. Oh, yes. Q. Where? A. There has been over \$1,000.00 expended in [126—58] grading at that point. Q. Whereabouts? A. Chiefly at the back, because that is where the high bank is. Q. When was that expended? A. Oh, I should say last June. Q. You turned the water on there? A. We turned the water on, and put men on with wheelbarrows taking the bank down. Q. You talked about a number of other improvements, buildings—You had reference, did you, to improvements up in Gold Creek basin? A. No. Q. Well, what other improvements did you have on this particular ground except those that you have particularly pointed out? A. In addition to the warehouse we have built on the wharf a derrick

(Testimony of P. R. Bradley.)

with the necessary electric hoist which is housed in with a small house; at about this point (indicating) we constructed an office building. Q. Describe that point so that we can get it into the record. A. I should say that point is between the shore line and the Government Road and to the east of a line drawn through the east side of the warehouse. Q. How much of an office building is that? A. That was an office building quite sufficient to meet all the office work that was done during the first year of construction work. Q. You fixed up an old cabin standing there, that is a fact, isn't it, worth about four or five hundred dollars? A. The office building? Q. Yes. A. I think something like that. Q. How much waterfront does your company claim— Q. Now, Mr. Bradley, from your wharf, marked "Warehouse," in a southeasterly direction how long a stretch of waterfront along the Gastineau Channel does your company claim? A. I couldn't say offhand, but a considerable extent. Q. How much approximately? A. Oh, I should say at least 2,000 feet. [127—59] Q. Two thousand feet? A. Yes. Q. Now, from your wharf to Sheep Creek is a distance of a little over three and a half miles? A. About that. Q. Don't you claim at least half of the waterfront in that direction? A. Oh, I believe not. Q. You have a large number of millsites and mining claims located between your wharf and Sheep Creek? A. We have some millsites and some mining claims. Q. Can you state how many? A. Offhand, no. Q. Can you state approximately how many? A. Oh, I

(Testimony of P. R. Bradley.)

should say the number of mining claims plus the millsites does not exceed ten. Q. That is exclusive of the millsites you are now applying for patent for?

A. No; some of those are included in the patent applications. Q. Some of those ten? A. Yes. Q.

How many millsites are you applying for patent to on this waterfront? A. I cannot give you the exact

number offhand. Q. They number pretty close to ten, don't they? You recognize these two plats? A.

I believe the territory you had in mind when you asked the question is from this point (indicating)

southeast. Q. That is correct. A. In other words, from this point in this direction? Q. You are now

applying for patent to about ten millsites, aren't you? A. I couldn't say. Q. Lying over the ground

marked here Abe Lincoln and General Grant? A.

There are eight millsites on the plat, but I cannot say that those are all included in patent applications.

[128—60] Q. You are applying for patent for millsites designated B, E, C, L, A, G, T, F, B, H and P, are you not? A. Yes, sir. Q. Now, aside from

those you said you have about 2,000 feet, more or less, of waterfront on Gastineau Channel immediately southeasterly from your fish-house—from your warehouse? A. That is my impression; yes, sir. Q.

And in round numbers, as near as you can state, now, representing ten millsites and mining claims together? A. Something like that. Q. What is your

reason for not wanting to extend the wharf southeasterly from your present wharfsite? A. Because

that would be in the path of snowslides. Q. Isn't it

(Testimony of P. R. Bradley.)

a fact you contemplate in the immediate future to extend your wharf in that direction? A. We do not. Q. That has never been contemplated? A. No. Q. You are afraid of snowslides? A. Yes. Q. How much of a stretch of country there do you fear snowslides on? A. Well, I should say offhand about 75 per cent of it. Q. About 75 per cent of it—is it one continuous stretch of country? A. No; those spots which are free from the dangerous snowslides are very small; there is considerable area in that section which is free from snowslides, but there is no great stretch at any one point which is free from snowslides. Q. Now, how far does this track extend—evidently intended here to represent a railroad track or tram—along the beach running in a southeasterly direction from your warehouse? A. Oh, I should say not less than 300 feet. Q. What is the objective point? A. The powder-house. Q. Is it down in that neighborhood some place that Shattuck has his powder-house, too? A. Yes. Q. How far from your place? A. Well, it is perhaps 100 or 200 feet further on. Q. And up on the hillside about where those slides come from you have got a plant, called a tailing plant? A. We have a tailing plant on the hillside, but not where the slides come from. Q. Start higher up or lower down? A. They come further down. Q. Right over the office? A. The office is in a dangerous position, that is why it was abandoned. Q. When was it abandoned? A. It was abandoned this spring [129—61] or early summer. Q. The danger from snowslides is chiefly in

(Testimony of P. R. Bradley.)

the summer season, is it—you weren't afraid of them last fall? A. We got out of there as soon as it was convenient. Q. Do you yet contemplate putting in a Turbo Electric plant? A. Yes; we contemplate putting in an additional power plant with the Alaska Juneau equipment. Q. Is that where you expect to put it (indicating on the map)? A. Yes. Q. Turbo electric? A. Yes. Q. When do you expect to start in with that? A. I cannot say at the present moment because I haven't received the full instructions from San Francisco in regard to the program for the work to be carried out this summer. Q. Now, as a matter of fact, you expect to get power for that mine from Speel River, don't you? A. No. Q. Well, the Alaska Juneau claims an interest in the project at Speel River, don't they? A. I believe they claim a one-quarter interest. Q. Is it the intention of your company to utilize that power for the mines here? A. No. Q. What do they expect to use it for? A. I think they have no expectation of using it for any purpose. Q. They haven't abandoned it? A. No. Q. By Speel River, of course, I mean the power from it which is got on Long Lake, Crater Lake, Speel River and Tease Lake—they don't expect to use any of this power for operating the mines or mills or any part of the plant here at Juneau? A. No. Q. Never did intend to? A. They did intend to at one time. Q. When did they abandon it? The COURT.—Now, Mr. Rustgard, I don't want to inquire into anything that is not connected with this case. Mr. RUSTGARD.—That question was objected to

(Testimony of P. R. Bradley.)

was it? The COURT.—I objected to it myself. Q. I want to show you this plat, called “Section F of Mineral Survey No. 982—A and B” and want to ask you if that is a section of a plat filed by your company in the land office in connection with your application for patent for those millsites shown? A. I believe that to be the case. Q. You are at present advertising in that case? A. Yes. Q. The application is pending? (No answer to the last question). Mr. RUSTGARD.—You will admit that to be a duplicate of it? Mr. HELLENTHAL.—Yes. [130—62] Mr. RUSTGARD.—I offer this map in evidence in connection with this cross-examination. The COURT.—Very well, it will be received. (Whereupon said map was received in evidence and marked Worthen Lumber Company’s Exhibit No. 7 and hereto attached.)

Redirect Examination by Mr. JACK HELLENTHAL.

Q. Mr. Bradley, in a general way, all the ground claimed by you on the Gastineau Channel shown there is necessary for use in connection with your milling plant? A. Yes, sir; it is. Q. By way of illustration, Mr. Bradley, how does the area used here by you and occupied here by you compare with the area occupied by the Treadwell mines? Mr. RUSTGARD.—That comes under the same objection. Q. How does the area occupied by the Alaska Juneau Company here compare with the area of other plants of the same magnitude? A. I believe the available or usable area within the boundaries

(Testimony of P. R. Bradley.)

claimed would be smaller. Q. Smaller than what?

A. Than plants handling a tonnage of what we proposed to handle, namely, 8,000 tons per day. Q. Are

there any other plants of that magnitude—of that size—plants as large in operation now? A. No gold

mining plant in the United States has a capacity of 8,000 tons per day. Q. What is the capacity of the

Treadwell plant? A. About 4,500 tons a day. Q.

That is one of the largest gold mining plants in existence at the present time? A. Yes. Q. That is the

same kind of a plant, isn't it, in a general way, Mr. Bradley? A. Yes. Q. In a general way, the same

methods are employed? A. Yes, sir; with the exception of the fact that we are hoisting over there

and will not be hoisting over here. Q. I know, but the milling operations are practically the same? A.

Yes. Q. Now, how does the area occupied by the Treadwell plant, taking the Treadwell plant as a

whole, compare with the area occupied by the Alaska Juneau Company? A. It is much greater. Q. And

the entire area that the Treadwell is occupying, is it necessary? A. It is, absolutely. Q. Will it take

you very long, Mr. Bradley, to see if these other two deeds are correctly platted on that map? A. No, I

believe not. Q. Here is a deed from Jimmie Johnson, Thomas Johnson and Louis Johnson, [131—63]

to the Alaska Juneau Company— Mr. RUSTGARD.—I object to that as immaterial, irrelevant

and incompetent. The COURT.—I suppose this is for the same purpose you had him check the other

deeds. Mr. HELLENTHAL.—Yes, your Honor, I

(Testimony of P. R. Bradley.)

offer that in evidence. The COURT.—Objection overruled. Mr. RUSTGARD.—Same objection as I made to the other Indian deeds—there is nothing shown that they had any property to convey. The COURT.—Objection overruled. (Whereupon said deed was received in evidence and marked Alaska Juneau Company's Exhibit "Z.") (This exhibit is a deed signed by Jimmie Johnson, Thomas Johnson and Louis A. Johnson to Alaska-Juneau Gold Mining Co. and purports to convey what is designated on exhibit "Y" as lot 1, and a copy of which is hereto attached.) Mr. HELLENTHAL.—I now offer in evidence deed from John Jackson to the Alaska Juneau Gold Mining Company. Mr. RUSTGARD.—I make the same objection to this. The COURT.—The same ruling. (Whereupon said deed was received in evidence and marked Alaska Juneau Company's Exhibit "A-1," copy attached.) (This exhibit is a deed from John Jackson to plaintiff and purports to convey what is designated on exhibit "Y" as lot 3.) Mr. HELLENTHAL.—I offer also a deed, your Honor, from Peder O. Holsboe, Nels Pearson and Knudt Topness to the Alaska Juneau Gold Mining Company. Mr. RUSTGARD.—I object to that for the reason it is *now* shown that they had any land, premises or property to convey and therefore hte deed conveys nothing. The COURT.—Objection overruled. Mr RUSTGARD.—And gives the Alaska Juneau Company no rights. The COURT.—Objection overruled. (Whereupon said deed was received in evidence and marked Alaska

(Testimony of P. R. Bradley.)

Juneau Company's Exhibit "B-1.") (This exhibit is a deed from Peder O. Holsboe, Nels Pearson and Knudt Topness to plaintiff and purports to convey what is designated on exhibit "Y" as lot 2, dated after this action was commenced.) [132—64] Q.

Mr. Bradley, will you take this patent map (Exhibit No. 7), step up to the blackboard and tell us whether those millsites are properly platted on the map, exhibit "Y." Are the millsites shown on exhibit "Y," referring to the A, L, E, T, B, G, U and Z millsites correctly platted on the map, exhibit "Y"? A. To the best of my knowledge and belief, the measurements and the physical features on the property check with the lines as laid out on the map.

Q. As described in the patent map? A. Yes. Q.

In connection with the survey for patent? The

COURT.—I don't see any millsites on this map, exhibit "Y." A. The claims marked in large letters

are millsites. The COURT.—Those big capital letters on exhibit "Y"— A. Represent millsites that

belong to the Alaska Juneau, that application has been made for patent for. Q. Application has been

made for patent for all those millsites and are now pending? A. Yes, sir. Q. And the Abe Lincoln

and General Grant lodes are also correctly platted on that map? A. To the best of my knowledge and belief.

Q. As near as you can check them up? A.

Yes.

[Testimony of F. H. Lenore, for Plaintiff.]

F. H. LENORE, a witness called on behalf of the Alaska Juneau Gold Mining Company, being first duly sworn, testified as follows:

Direct Examination by Mr. JACK HELLENTHAL.

Q. Mr. Lenore, state your name, please. A. Frank Howard Lenore. Q. Where do you reside? A. In Treadwell. Q. You are a surveyor by profession? A. Yes; I am. Q. Do you know Mr. B. D. Stewart? A. I do. Q. Did you work with Mr. B. D. Stewart during the past year or two? A. I did. Q. Do you know the A, L, T and other millsites composing the Alaska Juneau group of millsites on the shore of Gastineau Channel? A. I do. Q. Do you know who surveyed those for patent? A. I do. Q. And who made the survey? A. Mr. B. D. Stewart. Q. Were you with him at the time? A. I was. Q. Assisted him in the work? A. I did. Q. Calling your attention to exhibit "Y," I will ask you if all those millsites are correctly delineated upon that map as you and Mr. Stewart surveyed them for patent? A. They are. [133—65] Q. Do you know where the City Road is? A. Yes, sir. Q. Is that correctly platted on that map? A. It is. Q. And the Alaska Juneau wharf and the other things shown on the map are also correctly platted? A. Yes, sir. Q. Do you know where the thousand-foot Jorgenson reservation is, as described in the deeds that have been offered in evidence? A. Well, the northwest boundary is 555 feet from corner No. 1 of the Juneau Townsite Survey, No. 780. Q. That thousand-foot

(Testimony of F. H. Lenore.)

reservation as described in the deed—is that correctly platted on exhibit “Y”? A. It is. Q. Now, with reference to the posts at the millsite corners, Mr. Lenore—do you know whether those were in the ground? A. Yes, sir. Q. Did you find all the corners in the ground of the A millsite at the time of making the survey? A. All but one. Q. Which corner was that? A. That was corner No. 2—it is this corner here (indicating). Q. That lower corner? A. Yes. Q. That was out at the time you made the survey? A. Yes. Q. When was that survey made? A. For patent? Q. Yes. A. 1913. Q. You re-established that corner at that time? A. Yes. Q. How about the other millsites—were the corners in place? A. All except three, I believe. Q. How about the corners of the L millsite, for instance? A. They were all in except this one and this one (indicating). Q. The T millsite? A. They were all in. Q. G millsite? A. The G millsite were all in. Q. The Z millsite? A. The Z millsite were in. Q. The U millsite? A. The U millsite were in. Q. And the boundaries of the A millsite as marked upon the ground by stakes when you went there to survey could be readily traced? A. All except the tide-line. Q. Of course, that had to be meandered? A. Meandered. Q. But the lines extending down to the tide-land could be readily traced? A. Yes. Q. How about the L millsite? A. Same way. Q. And the G millsite? A. Same way. Q. Could the boundaries of the U millsite as marked upon the ground be readily traced? A. Yes, sir. Q. And the bound-

(Testimony of F. H. Lenore.)

aries of the Z millsite could be readily traced? A.

Yes. Q. When you say all [134—66] except the tide-line, the tide-line could be readily traced except it required some measurements to ascertain mean high tide? A. Yes. Q. Aside from that there was

no difficulty in tracing any of the boundaries? A.

Yes. Q. And the shore line, of course, was visible and could be traced upon the beach at the time? A.

Yes, sir. Q. When you made the survey in 1913, what, if anything, did you do in a way of establishing permanent corners at the northeast corners of the A, L and G millsites—for the millsites you surveyed for patent at that time? A. Where it was possible we

put a post 4x4, by hand, down anyway between 18 to 26 inches in the ground with a mound of earth and stones about it, and where it was possible we put as many as two or three or four bearings to this post; where a post was not practicable, we put a stone; and where we found a rock, that is, a large boulder, we used that, because it is less trouble and will last longer. Q. The corner occurring at each angle of the various millsites I have named were, in 1913,

marked by you by permanent monuments? A. Yes, sir. Q. These monuments are still in existence, as far as you know? A. As far as I know. Q. Do you

know who was in possession of those millsites at the time you made the survey, and prior to that time? A. The Alaska Juneau Gold Mining Company. Q. Do you know who has been in possession of them ever

since? A. The Alaska Juneau Gold Mining Company. Q. Do you know how long prior to that time

(Testimony of F. H. Lenore.)

the Alaska Juneau Company had been in possession of them? A. Well, anyway, from a year to two years. Q. From the date of the location? A. Yes; date of the location notice. Q. Been in possession of the land embraced in the [135—67] various millsites shown upon exhibit "Y"? A. Yes. Q. And making improvements upon the surface ground? A. Yes. Q. Do you know what year they commenced doing work on the ground there, Mr. Lenore? A. I think it was in the summer of 1912 that they started work on the millsites. Q. That they worked on the ground here? A. Yes. Q. Work further up town commenced previous to that? A. Yes. Q. But that is when they put their first structures on the ground? A. That is when they first started doing work—I think it was in the latter part of 1912. Q. You mean on the millsites? A. On the millsites; yes, sir. Q. And from that time they have been continuously working on the ground? A. Yes, sir. Q. On each of the millsites shown on the map? A. Yes.

Cross-examination by Mr. RUSTGARD.

Q. You helped to make this plat, section F, Mineral Survey No. 982—A and B, did you? A. Yes, sir. Q. At the time you made the survey in the spring or early part of 1913, did you make the survey for the purpose of a patent survey? A. Yes, sir. Q. Have you and Stewart made all the surveys for the Alaska Juneau on that ground since you started to make that survey in the spring of 1913? A. All the patent work; yes, sir.

Mr. SIMON HELLENTHAL.—I offer deed from

(Testimony of F. H. Lenore.)

W. A. Kelley as administrator of the estate of Annie Sullivan to Charlie Bowman (Shaw-eh-Nah) and Casiar Mary, to the Chief Johnson tract. (Whereupon said deed was received in evidence and marked Alaska Juneau Company's Exhibit "C-1.") (This exhibit is a deed purporting to convey what is designated as lot 2 on exhibit "Y.") Mr. HELLEN-THAL.—Another deed from Charley Bowman to Peder O. Holsboe and Nels Pearson to the same ground. Mr. RUSTGARD.—I object to that because there is no evidence to show that the party purporting to convey this property was seized of the property, or had any authority to convey, or had any property whatever to convey. The COURT.—Very well, the objection is overruled. If he hasn't, of course the deed don't amount to anything anyhow. (Whereupon said deed was received in evidence and marked Alaska Juneau Company's Exhibit "D-1.") [136—68] (This exhibit purports to convey the same premises as exhibit "C-1.") Mr. HELLEN-THAL.—I next offer deed from Peder Holsboe and Nels Pearson to Knudt Topnas. Mr. RUSTGARD.—I make the same objection to this deed. The COURT.—The same ruling. (Whereupon said deed was received in evidence and marked Alaska Juneau Company's Exhibit "E-1.") (Duly recorded affidavits for the annual labor of \$100.00 per annum for 1910 to 1915, inclusive, on Abe Lincoln and General Grant lodes received in evidence.)

[Testimony of John Reck, for Plaintiff.]

JOHN RECK, a witness called on behalf of the Alaska Juneau Gold Mining Company, being first duly sworn, testified as follows:

Direct Examination by Mr. JACK HELLENTHAL.

Q. You at one time were one of the owners of the Abe Lincoln and General Grant claims? A. Yes, [137—69] sir. Q. When did you first become interested in them? A. In 1899. Q. At that time were the stakes of the claims in place—the corner stakes? Mr. RUSTGARD.—I object to that as immaterial and irrelevant. The COURT.—Objection overruled. A. The front stakes were in place at that time; I don't know about the back ones at that time. Q. When were they put in on the back? A. Now, I wouldn't say; 1901 or '02. We had the claim surveyed for patent, I think it was in 1901. Q. Were all the stakes in place in 1901? A. Yes, sir. Q. And could the boundaries of the claims be readily traced from the markings on the ground? A. Yes, sir. Q. Do you know where the discovery was on the Abe Lincoln? A. It was right back of the old slaughter-house, not quite half way up the hillside. Q. What was there there in the way of rock in place bearing quartz? A. There was a gully running up to a well-defined ledge there; we drove in a tunnel on it about 40 or 50 feet, and there was rock in place all the way through that distance. Q. What did the ledge carry? A. She carried from a trace to \$4.00; I think there were one or two assays run a little over that. Q. In what? A. Gold. Q. How

(Testimony of John Reck.)

about the General Grant—do you know where the discovery was on that claim? A. On General Grant the discovery was down on the lower end, it is where the Alaska Juneau dock is now; there was a ledge running up the hill—not straight up but kind of angling up, this way (indicating). Q. What did that ledge carry? A. That carried about \$2.00. Q. In what? A. Gold. Q. Do you know whether the assessment work was done each year at the time the claims were sold to the Alaska Juneau Company? A. No; it was not done; it *was done* until we got into the land office and then there wasn't any work done every year until the last year we done work again. Q. You got a final receipt from the land office? A. No; we got the first receipt but not the final receipt. Q. You got the receiver's receipt after the entry had been made? A. Yes; the final receipt. Q. It was after that, Mr. Reck, the purchase was completed? [138—70] A. Yes, sir. Q. That was just before the Alaska Juneau millsites were located? A. It was after the millsite was located. Q. What year was it held nonmineral? A. I think it was 1912 or '11. Q. 1911, somewhere, wasn't it? A. I think it was 1911, I will tell you why—I know that it was reversed afterwards because we had partly sold a strip of land to Mr. Bradley for a millsite on the claims. Q. You know Mr. Bradley paid for the claims long after the decision was rendered by the department, don't you? A. Yes, sir. Q. The department had already held the ground nonmineral when Mr. Bradley bought the

(Testimony of John Reck.)

ground? A. Yes, sir. Q. And the millsites were located? A. The millsites were located ahead of that. Q. Don't you know the millsites were located the next day? Mr. RUSTGARD.—I object to that as not the best evidence. A. I wish to state this: These millsites were located ahead of that because there were stakes all over it and we had an agreement with Mr. Bradley in regard to it. Q. He was to use it for a millsite? A. Yes. Q. But what I am speaking of now, Mr. Reck, is it not the fact that he was to use the Abe Lincoln and General Grant for millsites, but he afterwards located millsites on them? A. Yes, sir. Q. That was after the department held the ground nonmineral? A. Yes. Mr. HELLENTHAL.—You can cross-examine.

Cross-examination by Mr. RUSTGARD.

Q. Do you know the date of the location of the millsites? A. I do not. Q. Do you know the date of the decision of the department? A. No. Mr. HELLENTHAL.—Just one question—Even before the location of these millsites on the ground, the Alaska Juneau had done some work on the claims towards making a millsite of it? A. Yes.

Mr. RUSTGARD.—Now, may it please the Court, Mr. Hellenthal and myself reached an agreement after adjournment of court last night in regard to the Warner survey of the mean high tide line, and I will dictate the agreement into the record:

It is stipulated and agreed by and between the parties [139—71] that, for the purposes of these cases now on trial and for no other purpose, the line

(Testimony of John Reck.)

on Worthen Company's Exhibit No. 8 designated as "Warner's Mean High Tide Line" is the true line of mean high tide from corner No. 1 of the Townsite of Juneau and southeasterly to a point approximately 100 feet southeasterly from corner No. 4 on the General Grant lode, the same being marked in pencil on the said Exhibit 8 as the southeasterly end Jorgenson one thousand foot reservation; and that from the last-named point in a southeasterly direction the line of mean high tide as shown on Alaska Juneau Company's Exhibit "Y" is the correct and true line of mean high tide; that is to say, to the south of the southerly end of the said Jorgenson thousand-foot reservation, as marked on Exhibit 8 and also as marked on Alaska Juneau Company's Exhibit "Y," thence southward up to and beyond the Alaska Juneau wharf, as shown on said exhibits the line of ordinary high tide is identical with the seaward boundaries of the A, U and L millsites as delineated on said Alaska Juneau Company's Exhibit "Y." Mr. HELLENTHAL.—That is the stipulation. Mr. RUSTGARD.—May it please the Court, in connection with the stipulation entered of record, I offer in evidence this tracing and ask that it be marked Worthen Lumber Mills Exhibit No. 8. The COURT.—Very well; it may be received for the purpose of intelligently understanding the stipulation. (Whereupon said tracing was received in evidence and marked Worthen Company's Exhibit No. 8 and is hereto attached). (This exhibit is the tracing from which exhibit No. 1 was printed.)

[Testimony of W. R. Lindsay, for Plaintiff.]

W. R. LINDSAY.—A witness called on behalf of the Alaska Juneau Gold Mining Company, being first duly sworn, testified as follows:

Direct Examination by Mr. JACK HELLENTHAL.

Q. State your name, Mr. Lindsay, please. A. W. R. Lindsay. Q. Where do you reside? A. Juneau. Q. Do you know the Alaska Juneau Gold Mining Company? A. Yes. Q. Were you ever employed by that company? A. I was. Q. Do you know where the A millsite is located, Mr. Lindsay? A. Yes. Q. Do you know when it was located? I call your attention to the location notice of the A millsite as offered in evidence, for the purpose of refreshing your memory as to the date—do you know [140—72] now when the A millsite was located? A. The location notice is July 16th, 1911. Q. At that time who were you employed by? Mr. RUSTGARD.—That is objected to as immaterial and irrelevant; the location notice shows that he located the millsite for himself. Mr. HELLENTHAL.—No, he didn't locate it at all; the location was by Bayless. Mr. RUSTGARD.—It is still immaterial and irrelevant. The COURT.—Objection overruled. A. Alaska Juneau Company. Q. Do you know Mr. Bayless? A. Yes. Q. For whom was he employed at that time? Mr. RUSTGARD.—I object to it as immaterial and irrelevant. The COURT.—I suppose you mean to prove by him it was located for these people? Mr. HELLENTHAL.—Mr. Bayless simply worked for the Alaska Juneau Company—signed

(Testimony of W. R. Lindsay.)

his own name but located it for the Treadwell people; he was working under Mr. Lindsay, and Mr. Lindsay can testify as to the facts and circumstances. The

COURT.—If he knows, if he has any knowledge, he may testify. Q. You know Mr. Bayless was working under you, wasn't he, Mr. Lindsay? A. He was.

Q. Who directed his work? A. I did. Q. Now, do you know how Mr. Bayless located the A mill-site—how and for whom? Mr. RUSTGARD.—I

object to that as containing two questions in one and as immaterial and irrelevant. Mr. HELLEN-

THAL.—I am simply asking him now whether he knows. The COURT.—You may answer that—

whether you know. A. Yes; I know. Q. Now, for whom was the A millsite located? Mr. RUST-

GARD.—I object to that as immaterial and irrelevant. The COURT.—Well, if he knows he may tes-

tify, subject to cross-examination as to how he knows and what he knows about it; anybody who knows

about a thing can testify—the weight of it is to be determined afterwards. Q. For whom was Mr.

Bayless acting in making the location of the A mill-site? A. The Alaska Juneau. Q. Under whose di-

rections? A. Under my directions. Q. Did you direct him to locate the millsite as he did? A. Yes.

Q. Mr. Bayless has also located some lode claims in the Basin in the same way? Mr. RUSTGARD.—

I object to that as [141—73] leading and also immaterial. Q. What has Mr. Bayless done in the

Basin in the way of locating lode claims for the Alaska Juneau Company? Mr. RUSTGARD.—I

(Testimony of W. R. Lindsay.)

object to that as immaterial and irrelevant. The

COURT.—How is that relevant? Mr. HELEN-

THAL.—I don't think it is very important—it shows that he located some claims in the basin—just part of the transaction. The COURT.—The objection

will be sustained. Q. Now, Mr. Lindsay, I wish you would tell the Court what you and Mr. Bayless did—you were also connected with the location of this claim—you were also there on the ground? A. Yes;

I was there. Q. And did the surveying in connection with the location? A. Yes. Q. Now, what was done in the way of putting stakes in the ground at the time the location was made, as fixed by the date of the notice? A. The stakes were put in as the

notice calls for, except one corner runs out into the channel and the witness corner was put up for that. Q. There was a stake placed at each corner

and set, only where the stake couldn't be placed and the witness was staked for that? A. Yes. Q. Was

the witness corner marked properly as a witness corner? A. It was marked as a witness corner; yes.

Q. Was it indicated on the shore? A. Yes. Q.

How about the other stakes? A. They were all

marked. Q. How were they marked? A. Marked

as called for in the notice. Q. Marked the corners

of the claims as called for in the notice? A. Yes.

Q. What do you say as to whether the boundary of the A millsite—as to whether the boundaries were so

marked that they could or could not be readily traced? Mr. RUSTGARD.—I object to that as in-

competent and calling for the conclusion of the wit-

(Testimony of W. R. Lindsay.)

ness. The COURT.—No; I don't think so—it is a little leading. Q.—Could the boundaries of the A millsite as marked upon the ground by yourself and Mr. Bayless at the time of its location be readily traced? Mr. RUSTGARD.—Same objection to that. The COURT.—The objection was that it is incompetent, irrelevant and immaterial and calls for a conclusion of the witness—that objection is overruled; the Court said it was leading—the second question is as leading as the first—change the form of it. Q. How were the boundaries of the A millsite marked upon the ground by you and Mr. Bayless, [142—74] with reference to whether or not the same could be readily traced? A. The stakes were all in and the side lines given; anyone looking for them, I guess, could find them. Q. Anyone could find the lines? A. I think so. Q. They could be readily traced? A. Yes. Q. At the time you made the location of the A, you also located the L in the same way, didn't you? A. Yes, sir. Q. How were the boundaries of the L marked on the ground? The COURT.—Just a minute—where is the L? Mr. HELLENTHAL.—Right next to the A. Q. What did you do in the way of marking the boundaries of the L? A. Put in the corner stakes and cut the side lines. Q. Did you also cut the side lines of the A? A. Yes, sir. Q. Brushed them out? A. Yes. Q. Now, how was the L marked with reference to whether the boundaries could or could not be readily traced? A. Oh, they could be found all right. Q. They could be traced, then? A. Yes. Q. Were the stakes marked

(Testimony of W. R. Lindsay.)

for the corners? A. Yes. Q. That was located by yourself, wasn't it? A. Yes. Q. In what capacity

were you acting—for whom did you make the location? Mr. RUSTGARD.—I object to that as immaterial and irrelevant. The COURT.—Objection overruled. A. I was acting for the Alaska Juneau.

Q. And you signed the paper notice with your own name in the same way? A. Yes. Q. What did you

do thereafter in the way of transferring the paper title? A. I deeded the claim to the company. Q.

Were you present when Mr. Bayless did the same thing? A. I don't remember whether I was or not.

Q. You do know that both you and Mr. Bayless were working for the company and made both the A and L locations for the company? Mr. RUSTGARD.—

I object to that as immaterial, irrelevant and leading. The COURT.—It is repetition. Q. I say you

do know that. A. Yes. Q. Now, at the time you made these locations in July, 1911, there were also a lot of other millsites located in the same vicinity?

A. Yes. Q. In the same manner, for the Alaska Juneau Company? A. Yes. Q. What, if anything,

did you observe in the way of work on this group of millsites—at that time was there any work being carried on there? A. What time was that? Q. In

July, 1911, when [143—75] you made the surveys? A. I couldn't say just when it was, but there

was work done upon some of the millsites that summer, but I couldn't say just what time it was. Q.

You couldn't say what time it was, but in the summer of 1911, anyway? A. Yes.

(Testimony of W. R. Lindsay.)

Cross-examination by Mr. RUSTGARD.

Q. Why didn't you sign the location notice as agent for the Alaska Juneau Company if you really acted in that capacity? A. Because I was directed to locate it myself and deed it to the company. Q. For the benefit of the company? A. Yes. Q. You were in no way personally interested in the millsite when you made the location? A. No. Q. How long after you made the location did you sign the deed to it, do you remember? A. It was a very short time, but I couldn't say when it was. Q. Do you know what is the reason the Alaska Juneau Company didn't sign their own name to it? A. No; I don't know what the reason was. ~~Mr. RUSTGARD.—That is all. Mr. HELLENTHAL.—That is all, Mr. Lindsay.~~

[**Testimony of R. G. Wayland, for Plaintiff.**]

R. G. WAYLAND, a witness called on behalf of the Alaska Juneau Gold Mining Company, being first duly sworn, testified as follows:

Direct Examination by Mr. JACK HELLENTHAL.

Q. Mr. Wayland, your name is R. G. Wayland? A. Yes, sir. Q. You are the Assistant General Superintendent of the Alaska Juneau Company? A. The Alaska Treadwell. Q. You are not connected with the Alaska Juneau Company? A. No. Q. Were you employed by the Alaska Juneau Company some time before this? A. Up until September of last year. Q. Were you employed by the Alaska Juneau Company in the year 1909, 1910, 1911, 1912, 1913 and 1914? A. Yes, sir. Q. In what capacity? A. Surveyor. Q. Had charge of the Engineering

(Testimony of R. G. Wayland.)

Department? A. Yes. Q. Are you familiar with the ground embraced in the A, L, U and G millsites?

A. Yes. Q. You are a mining engineer, Mr. Wayland? A. Yes. Q. Have you examined the ground

of the A, U and L millsites with reference to ascertaining whether it is mineral or nonmineral? A.

Yes. Q. Do you know what the character of those three sites is with reference to being mineral or non-

mineral? A. Yes. Q. What is it? A. Nonmin-

eral. [144—76] Q. Of all three claims I have named? A. As far as I can see, my opinion of it

is nonmineral. Q. Do you know where the stakes on the A millsite were placed? A. Yes. Q. How long

after the location of the millsite were you on the ground? A. Within a week or two. Q. What did

you see on the ground at that time in the way of stakes? A. I saw all the stakes on the upper side

line and followed the brushed outlines, and I saw one or two of the stakes on the beach. Q. The lines

were brushed out as well as staked? A. Yes. Q.

Were the stakes marked as described? A. They

were marked on the corners of the millsites. Q.

How about the L millsite? A. L millsite marked

the same way, with L millsite corners. Q. How was

the A millsite marked with reference to whether its boundaries could or could not be readily traced? A.

Its boundaries could be readily traced. Q. How

about the L millsite? A. Its boundaries could be

readily traced. Q. Do you know where the U mill-

site is? A. Yes. Q. Do you know when that was

located? A. Located in February, 1913. Q. Were

(Testimony of R. G. Wayland.)

you on the ground shortly after it was located? A.

Within about a week. Q. What did you find in the

way of stakes? A. I found three stakes set for the corners, and I think there was a pile marked for the witness corner, for the fourth stake; it was situated in the channel at a point where it could not be set.

Q. How about the stakes, were they marked for the corners to show what they represent? A. Yes. Q.

Each stake was marked so as to indicate what the stake stood for? A. Yes. How were the bound-

aries of that location marked with reference to whether or not they could be readily traced? A.

They could be readily traced, because you could stand at one stake and see the other two. Q. Now, Mr.

Wayland, do you remember when the Alaska Juneau Company commenced work on that group of

millsites? A. Yes. Q. Looking towards the con-

struction of the milling plant on it? A. Yes. Q.

What time was that? A. That was in the summer

of 1911. Q. What do you say as to whether [145—

77] or not that work then commenced has been

carried on continuously ever since during the working season? A. It has been carried on continuously

during the working season. Q. Ever since? A.

Ever since. Q. They have had some men at work

there all the time from 1911 up to the present time,

except in the winter-time when work could not be

carried on? A. Yes.

[**Testimony of P. R. Bradley, for Plaintiff
(Recalled).**]

P. R. BRADLEY, a witness recalled for further cross-examination, having been previously sworn, testified as follows:

Cross-examination (Cont'd.) by Mr. RUSTGARD.

Have you had a chance to refresh your memory as to the amount of waterfront you have south of your wharf in this town? A. I haven't, no; I didn't measure that up since I testified yesterday. Q. Now, I will ask you whether or not you haven't a waterfront from your wharf in a southeasterly direction down to Snowslide Creek, approximately 7,000 feet? A. I believe that to be substantially correct. Q. You have south of your wharf the E and D millsites, the R. lode, and the Utah running lengthwise with the beach—that is a patented claim? A. Yes. Q. And next to that the Q lode, and next to that the Queen lode, and next below that the King lode? A. Yes. Q. The lode claims are approximately 1500 feet long, except the Q lode, which is in round numbers 600 feet on the beach? A. Yes. Q. The whole thing amounting to approximately 7,200 feet? A. About that. Q. You spoke about some slides—is there any evidence of any slide in the neighborhood of your wharf, except right at the point where your track goes from the wharf and goes up the hillside, and isn't that track out clear through that little slide? A. I don't understand the question, what you mean by slide—snowslide or landslide? Q. Any kind of

(Testimony of P. R. Bradley.)

a slide? A. Yes; there is evidence of slide in a good many places. Q. Near the beach? A. Near the beach and above the beach. Now, take it near the beach—is there any evidence of any slide in that particular place near the place where your track runs up the hill? A. The only evidence at this particular point is right here (indicating). Q. That is right above your wharf as shown on exhibit “Y”? A. Yes. [146—78] A. *Yes.* Q. That hillside is pretty well timbered, isn’t it? A. It is at points. Q. You can look at it from the window here? A. Yes; but you cannot see between the places that are not timbered looking from this direction. Q. You spoke about the area in comparison with the Treadwell. Now, the Treadwell Company and consolidated companies—whatever you may call them—operate three or four mines on Douglas Island, across the channel here? A. Yes, sir. Q. How many mines are they operating? A. Three mines. Q. And they have got three or four different mills? A. Yes. Q. Scattered how far apart? A. I cannot give you the exact distances apart, but the entire area is one and eighth-tenths miles in extent. Q. There is one mill at the north-westerly end and another mill and mine at the south-easterly end of that stretch? A. That is right. Q. And the mine and the mill are on the same area—are occupying the same area, aren’t they, the mines and the mills on the Island? A. With the exception of that mill which is at the westerly end of the property; there is no mine underneath that mill. Q. The mine is further south? A. Further to the east. Q. Un-

(Testimony of P. R. Bradley.)

derneath the tunnel chiefly—the Ready Bullion you are referring to? A. No; the 300 mill. Q. In this particular place you will have the milling plant on the beach here in question, while the mine is about two miles on the other side of the mountain up in the Gold Creek basin—that is correct? A. Yes. Q. Your mining crew will be up in the Basin and your milling crew will be down here? A. Yes. Mr. RUSTGARD.—I think that is all.

Redirect Examination by Mr. JACK HELLEN-
THAL.

Q. Those slides [147—79] which occurred above the Alaska Juneau wharf—what were they, land or snowslides? A. Landslides. Q. That was a small landslide that occurred there a few years ago? A. I believe that was the case—I didn't see it. Q. The ground above has been bulkheaded to prevent a recurrence? A. To a certain extent. Q. The slide you spoke of yesterday as being such an injury to wharf construction to the south of your present wharf were not landslides but snowslides, as I understand it? A. Yes; snowslides as I meant it understood. Q. That part south of your wharf is subject to snowslides, with the exception of isolated spots? A. That is what I wanted to say. Q. How is your powder-house constructed? A. In the form of a tunnel in solid rock. Q. Built so the snowslides could not hit it? A. Yes.

Recross-examination by Mr. RUSTGARD.

Q. There are a string of small cabins on the beach below your wharf? A. There a few small cabins.

(Testimony of P. R. Bradley.)

Q. Look as though they had been there a good many years, don't they? A. I stated in my testimony yesterday there are certain isolated spots free from snowslides. Q. Have you ever seen any snowslides there anywhere? A. No. Q. Have you ever heard of a snowslide except at Snowslide Creek? A. Yes. Q. Whereabouts? A. Why, I understand there were some photographs taken in 1912 showing slides over the entire extent of that hillside. Q. You have leased a lot of ground down here to the Standard Oil Company, haven't you? A. Yes; that is one of the isolated spots. Q. They have built oil tanks there, and their houses? A. Yes. Q. And timber is growing all over the hillside there? A. No; not all over the hillside. Mr. RUSTGARD.—That's all.

Plaintiff introduced in evidence Exhibit "K-1," which is notice of location of "U" millsite, copy attached; Exhibit "N-1," which is deed for "U" millsite from the locator to plaintiff, copy attached; Exhibit "O-1," which is affidavit of assessment work on Abe Lincoln and General Grant lodes for 1911 and 1912.

[Testimony of E. W. Pettit, for Defendant (in Rebuttal).]

REBUTTAL.

E. W. PETTIT, a witness called on behalf of the Worthen Lumber Mills, being duly sworn, testified in rebuttal as follows: [148—80]

Direct Examination by Mr. RUSTGARD.

Q. What is your official position, Mr. Pettit? A.

(Testimony of E. W. Pettit.)

Clerk of the city of Juneau. Q. Have you in your possession the records relating to the passage of Ordinance No. 87 of the City of Juneau? A. I have.

Q. This volume is a book containing the minutes of the proceedings of the City Council at a meeting held July 19, 1907? A. It is.

Q. And is in your possession as city clerk? (Exhibiting book to witness.)

A. It is. Mr. RUSTGARD.—I offer in evidence

that part of the minutes of the city council of the town of Juneau for July 19, 1907, relating to the adoption of Ordinance No. 87, extending and laying

out Franklin Avenue. Mr. HELLENTHAL.—I

shall object to Ordinance 87. Mr. RUSTGARD.—

I will read it. The COURT.—Now, Mr. Rustgard,

in order to get the thing into shape—you are offering

to read Ordinance 87? Mr. RUSTGARD.—Yes.

The COURT.—Then offer the ordinance. Mr.

RUSTGARD.—We haven't got it. Mr. HELLEN-

THAL.—If they haven't got it I shall object to it.

Mr. RUSTGARD.—We can probably get the ordi-

nance here. The COURT.—I will admit that sub-

ject to being connected. Mr. RUSTGARD.—

(Reading from minute book of the city council of the

town of Juneau, from the minutes of July 19, 1907)

—“The Committee on Streets, Lights, Sewerage and

Wharfage reported recommending the passage of an

ordinance introduced at a council meeting held July

2, 1907, entitled ‘An ordinance providing for the ex-

tension, laying out and opening of Franklin Street in

the City of Juneau.’ The ordinance was numbered

No. 87 and read. Mr. Reck moved that the ordi-

(Testimony of E. W. Pettit.)

nance be adopted, seconded by Mr. McCloskey. The Chair ordered the roll called. Councilmen Jaeger, McCloskey, Reck, Young and Zenger voted aye; Councilmen Forrest and Ruhe absent. Chair declared the motion carried and the ordinance adopted."

Mr. Pettit, do you have ordinance No. 87? A. I have a copy that was taken out of the "Daily Record Miner" for July 24, 1907—one of the publications. Mr. RUSTGARD.—I didn't read all of this. (Continues reading.)—"Mr. McCloskey offered the following resolution: Resolved, That the map made by C. E. Davidson, July, 1907, of that portion of Franklin Street affected by ordinance No. 87 be accepted and approved by the Council. Seconded by Mr. Reck. Chair ordered the roll called; Councilmen Jaeger, McCloskey, Reck, Young and Zenger voted aye; [149—81] Councilmen Forrest and Ruhe absent. Chair declared the motion carried." Q. You say you haven't that ordinance? A. That is a copy. Q. Is the original ordinance, signed by the president pro tem, Mr. Jaeger, in the possession of the city clerk at the present time? A. It is not. Q. Where is it? A. I don't know. Q. Have you made a search to find it? A. I have. Q. How long, as far as you know, has it been gone from the records? A. Well, shortly after I took office, over a year ago, I made a search of al the ordinances and that was one of the missing—there are several missing from the records. Q. Have you the map referred to in this resolution of the city council at this meeting of July

(Testimony of E. W. Pettit.)

19, 1907, which I have just read? A. I have. Q. Is this the map? A. It is. Q. That map is now the property of the city and a part of the records of the city clerk's office? A. Yes. Q. Is there any other map referring to that subject in the city clerk's office? A. I have been unable to find any. Mr. RUSTGARD.—I now offer this map, together with Ordinance No. 87, both in evidence. Mr. HELLEN-THAL.—I want to ask Mr. Pettit a few questions about this ordinance: Q. Mr. Pettit, you say that the Ordinance No. 87 you haven't got? A. Yes, sir. Q. That has been lost? A. It has as far as I know. Q. When you took office a year ago you looked over the ordinances and checked them up and there are several missing, and Ordinance No. 87 was one that was missing? A. Yes. Q. Then you went out among the newspaper offices and got a copy of them? A. That is true. Q. You went to the "Record Miner" and found where Ordinance No. 87 was copied in the paper and substituted it in your files? A. It was taken from the copy in the Governor's office—we didn't clip the paper. Q. You went to the Governor's office and found there an old copy of the "Record Miner" in which Ordinance No. 87 purported to be published? A. Not personally. Q. You never compared that with the original? A. Not personally. Q. You don't know whether it is a copy of Ordinance No. 87 or not? A. I do not. Q. All you know is there was a copy of No. 87 [150—82] purported to be published in the "Record Miner" and you took that and substituted it in your record?

(Testimony of E. W. Pettit.)

A. That is true. Q. And you took that as Ordinance No. 87? A. That is true. Mr. RUSTGARD.—I offer the ordinance. Mr. HELLENTHAL.—I object to it for the reason that the copy offered in evidence is not authenticated, and an ordinance of the city cannot be proven by a copy of that character. The only way an ordinance can be proved is by producing the ordinance itself and offering it in evidence—or a certified copy of it, at least, and I don't know whether a certified copy of an ordinance would be enough. I have the further objection to it, that nothing has ever been done under this ordinance—it is merely a paper resolution, and the Franklin Street now referred to as being laid out is not laid out in accordance with this ordinance. The COURT.—The last objection will be overruled at once. Now, the first objection—this is a copy of a copy, Mr. Rustgard. Mr. RUSTGARD.—Yes, I realize that, your Honor—it is a copy of a copy. If counsel makes the objection that we ought to have offered the paper from which it was taken, I will get the paper. Mr. HELLENTHAL.—I am not objecting to the paper; I don't think the paper would be any better than this. Mr. RUSTGARD.—If counsel prefers the newspaper—Mr. HELLENTHAL.—I will let the record show that this is the newspaper to which Mr. Pettit testified. Mr. RUSTGARD.—I will call the Court's attention to the fact that the ordinance purports to be published at the expense of the city counsel, by reason of a resolution of the council. The COURT.—I think that the newspaper

(Testimony of E. W. Pettit.)

would be all right, and of course it is under the agreement that that may be considered the newspaper—that would be all right if you had somebody that knew anything about the publication at the time, here. You put Mr. Pettit on the stand, who has only been city clerk for a year, and you try to prove by him that he saw a publication in the Record Miner—that is what it amounts to—in 1907. Now, if you bring the editor or publisher of the paper—in 1907—or even bring the person who was city clerk at that time, who knows something about [151—83] these things, then it might be admissible. Mr. RUSTGARD.—I will ask a few questions and overcome that. Q. At the time this ordinance was published, who was the city clerk—can you tell from the records? A. Nathanael Greene. Q. Where is he now? A. To the westward—Cordova, I believe. Q. He isn't in the city? A. He is not in the city. Q. Is the Record Miner a publication at the present time? A. No. Q. How long since that suspended? A. Oh, it must have been five or six years ago. Q. Do you know who was the editor of that paper at the time of the purported publication of this ordinance? A. I couldn't say positively—I think Frame, but I couldn't say positively. Q. Is he in the city? A. No. Q. Do you know where he is? A. The last I heard of him he was out to the westward.—Valdez, I think. Q. I don't think there is anything else I care to ask you, Mr. Pettit.

[Testimony of E. R. Jaeger, for Defendant (in Rebuttal).]

Alaska Juneau Company's Exhibit "P-1" received in evidence, it being certificate of payment of territorial license fee for 1914.

E. R. JAEGER, a witness called on behalf of the Worthen Lumber Mills, being duly sworn, testified in rebuttal as follows:

Direct Examination by Mr. RUSTGARD.

Q. Your name is E. R. Jaeger? A. Yes, sir.
Q. You live here in Juneau? A. Yes. Q. Have lived here for several years last past? A. Yes.
Q. Did you occupy any official position with the town government during the year 1907? A. Yes.
Q. What position? A. Why, I was a member of the city council. Q. During that time did you ever act as mayor pro tem? A. I did. Q. I show you a document marked Ordinance No. 87, and ask you if you are familiar with the document? A. I have looked the document over and I remember of having passed an ordinance something similar, if not a copy of this at the time that I was acting mayor. Q. Do you remember whether you signed such an ordinance as acting mayor? A. Yes; I did. Q. Do you remember in what paper that ordinance was published? A. Why, I remember that during that particular term the Record Miner was the official publication for the city; I remember that because I remember that Mr. Zenger, down here, was chairman of the committee on printing and publication

(Testimony of E. R. Jaeger.)

and I remember that they had quite a time the early summer before that letting the contract for the printing for that year. Q. The ordinances passed by the [152—84] city council during that term were published officially in the Record Miner?

A. That is my impression of it. Q. I will ask you to look at this blue-print and I direct your attention especially to your name, E. R. Jaeger, signed to a certificate, and ask you if you recognize that signature? A. Yes, I recognize the signature.

Q. Whose signature is it? A. My signature.

Q. That is a blue-print of it? A. Yes, sir; I remember of signing that tracing—I remember of signing the tracing made by the engineers, and also remember that we had those metes and bounds checked up and had a good deal of trouble in getting it finally adjusted—I know we had some trouble and it hung fire a long time; just what it was I don't remember now, but I remember we had several engineers on the job there, one checked up the other, and just what the delay was, I don't remember now, because I don't remember that much about it. Q. But after it was finally passed and adopted by the city council you attested your signature to it? A. I did to that tracing. This here (referring to blue-print) has the appearance of being a blue-print made from the tracing—I would say that from the inspection of Mr. Greene's and my signature. Q. Do you recognize Mr. Greene's signature? A. Yes; I think that is Mr. Greene's signature. Q. Nathanael Greene, who was the city clerk at the time? A. City clerk.

(Testimony of E. R. Jaeger.)

Mr. RUSTGARD.—I again offer the ordinance and this map in evidence. Mr. HELLENTHAL.—I just want to ask the witness a question or two: Q. (By Mr. Hellenthal.) Mr. Jaeger, you don't know whether the document offered in evidence is an exact copy of Ordinance No. 87 or not—you never compared it? A. I never compared it, no. Q. You

couldn't testify that that is a copy of the ordinance that was passed, from your own knowledge?

A. No, not from my own knowledge, but if the document on the desk is a copy of what was published, Mr. Greene was a man that was very methodical—

Q. I am not asking you, Mr. Jaeger—A. Of my own knowledge? Q. You don't know of your own knowledge whether that is a copy of Ordinance No. 87 or not? A. I don't know anything about it; I

never made a comparison and don't know. Mr. HELLENTHAL.—Same objection [153—85] I made before. The COURT.—Well, I am not sure about this, but I feel this way: This is an equity suit and if I finally determine, on a more thorough investigation, that this is not the way to prove an ordinance and it cannot be proved this way, it is easy enough then to disregard it—the objection will be overruled at this time. (Whereupon the map and ordinance above referred to were received in evidence and marked respectively Worthen Company's Exhibit 10 and 9 and are hereto attached.)

[Testimony of J. W. Bell, for Defendant.]

J. W. BELL, a witness called on behalf of the Worthen Lumber Mills, being first duly sworn, testified in rebuttal as follows:

Direct Examination by Mr. RUSTGARD.

Q. Your name is J. W. Bell? A. Yes, sir.
Q. You have lived in the city of Juneau for several years? A. Yes, sir. Q. Were you a member of the common council during the term of 1912? A. Yes, sir. Q. And during the spring and summer of the year? A. Yes, sir. Q. Do you know what work, if any, was done on what is known as lower Franklin Street, or Franklin Avenue in this city during that term? A. Yes. Q. What work was done? A. Well, there was a street built there from just this side of the oil-house clear to the city limits; part of it was graveled and part of it was planked. Q. The oil-house, that is a place situated on the northwesterly side of the sawmill property? A. Yes, sir. Q. Then the street was built past the sawmill property down to the city limits? A. Yes, sir. Q. Is that where the street is now? A. Yes, sir. Q. Built out of pilings, timbers, planks and railing? A. Yes, sir. Q. The same street that is there now? A. Yes, sir. Q. Has been there ever since? A. Yes, sir. Q. Who paid for it? A. The city council. Q. Out of city funds? A. Yes, sir. Q. And it has been used and occupied ever since as a public street and thoroughfare? A. Yes, sir. Q. One of the best travelled streets in the city?

(Testimony of J. W. Bell.)

A. I guess it is. Q. Do you remember what time the work was started? A. I think it was along about June; I couldn't say the exact date. Q. 1912? A. 1912. [154—86] Q. They started at the lower or town end of it? A. Well, we built both ways. The COURT.—June, 1912? A. Yes; sometime during the summer; I don't remember the exact date now. Q. You don't remember when it was completed? A. I do not. Q. It was during the summer? A. Oh, yes. Q. And the Alaska Road Commission extended the roadway towards Sheep Creek? A. Yes, sir. Q. That is a distance of about three and one-half miles away from Juneau? A. Yes, sir.

Cross-examination by Mr. JACK HELLENTHAL.

Q. The first work looking towards the construction of that street, Mr. Bell, was done by the city council, while you were on the council during the month of June or July, 1912, was it not? A. Yes, sir. Q. And at that time was there any ordinance No. 87 on file in the office of the city clerk—that is, any ordinance laying out any street along there? A. Not that I know of—I understood there was such an ordinance, but when we came to look it up my impression is we couldn't find it. Q. In laying out the street, you didn't follow any ordinance previously passed? A. Not that I know of. Q. It wasn't done pursuant to any ordinance previously passed? A. Not that I know of. Q. And the work was done by you independently of any ordinance? A. We made two surveys. Q. Where were those surveys made?

(Testimony of J. W. Bell.)

A. They started where the gravel road ends at the present time. Q. That is this side of the sawmill?

A. This side of the sawmill—this side of the Shattuck oil-house and back of the present street line.

Q. Up on the high land? A. Up on the high land way above high tide, and the other one run along the beach.

Q. And those two surveys were considered by the city council? A. By the street committee—

I think the city council accepted them on the report of the street committee. Q. It was determined that

the street along the beach would be the cheaper?

A. That was the idea. Q. And that is the reason the street along the beach was built and not the street on

the upland? A. Yes. Q. If the upland street had been the cheaper you would have built the street

there and not put the street on the beach? A. Yes.

Q. And all that surveying was done in the year of 1912 while you were on the council? A. Yes, sir.

Q. Without any reference to any previous ordinance or [155—87] any previous survey?

A. Yes, sir; we hired a surveyor and had the survey made. Q. Hired a surveyor, started on the work,

laid out the street and built it? A. Yes, sir. Q. In

building that street, Mr. Bell, from the sawmill to the end of the city limits, you had no negotiations

with the Alaska Juneau Gold Mining Company whatsoever? Mr. RUSTGARD.—I object to that as

immaterial. A. None whatever. Q. Was any permission had from the Alaska Juneau Gold Mining

Company to build the street? Mr. RUSTGARD.—I object to that as immaterial and irrelevant. The

(Testimony of J. W. Bell.)

COURT.—How so, Mr. Rustgard—How is it immaterial or irrelevant? Can the city lay out a street across a man's property without his consent? The objection will be overruled. A. Not to my recollection—we had no agreement with anyone. Q. Never spoke to the company or they never spoke to you about it? A. No, sir. Q. The street was simply built without any talking about it at all? A. Yes, sir.

[**Testimony of H. S. Worthen, for Defendant (in Rebuttal).**]

H. S. WORTHEN, a witness recalled on behalf of the Worthen Lumber Mills, having been previously sworn, testified on rebuttal as follows:

Direct Examination by Mr. RUSTGARD.

Q. Mr. Worthen, I show you a photograph and ask you what it represents and from what point it was taken, and when? A. Represents that portion of the mill, below the Jorgenson reservation line seaward. Q. Where was that picture taken from? A. Taken from the extreme end of the lumber-yard as we have it now constructed. Q. That is, from this point marked platform on exhibit No. 1? A. Yes. Q. From the lower or southernmost end? A. Yes; southeasterly end looking toward the fish-house. Q. The roadway on the left, I ask you whether or not that is Franklin Street, referred to in the proceedings? A. Yes, sir. Q. The house in the middle back of the picture.—what house is that? A. House known as the fish-house. Q. I will ask

(Testimony of H. S. Worthen.)

you what time this picture was taken? A. It was taken April 14th, at 11 A. M., 1915. Q. Now, what difference is there in the situation at the time this picture was taken and the time the injunction was served upon you in 1020-A? [156—88] A. The

situation is the same except that these two piles (indicating) were broken over when the bulkhead gave away. Q. These few piles leaning from the street outward have broken out since from the edge of the street from the pressure of debris? A. Yes.

Q. Otherwise the piles represented in this picture were there at the time the injunction was served?

A. Yes, sir. Q. And these were the piles your witness and you have testified to were set by your company or your predecessors? A. Yes, sir. Mr.

RUSTGARD.—I offer this picture in evidence. Mr.

HELLENTHAL.—Let me ask a question or two about the picture. Mr. Worthen, all these buildings shown in the photograph that has just been offered, back of the street there, are all Alaska Juneau buildings, are they not? A. As far as I know they are.

Q. That large building is their carpenter shop, isn't it? A. I don't know what they designate it as; this is where the office is now—this is a little steam-heating plant, and their office is right on this end.

Q. That is the large building, anyhow? A. It is the large sheet-iron building at the left? Q. This

building that shows over the top there is the old Chief Johnson house isn't it? A. I don't know

about that, Mr. Hellenthal; it is where the fishermen used to live when I came here. Q. Mr. Worthen,

(Testimony of H. S. Worthen.)

you know that this picture was taken this year?

A. Yes; the 14th of April. Mr. HELLEN-THAL.—No objection. (Whereupon said photograph was received in evidence and marked Worthen Company's Exhibit No. 11 and hereto attached.)

Q. (By Mr. RUSTGARD.) I show you another picture, Mr. Worthen, and ask you from what point that was taken and what it represents? A. It was taken

from a position on the float at the lower end of the boom ground looking toward the mill, showing the boom ground at the right and the same piles as the other picture shows, partially; the row of houses on the inner side of the street, and the sawmill in the distance. Q. That row of cottages there are on the

upland side? A. Yes, sir. Q. Now, there are piles of lumber [157—89] lying alongside of the street there—is that lumber lying on this piece of ground you designate as platform? A. Yes, sir. Q. And

they are lying on the lower side of the street? A. Yes, sir. Q. The mill is the building in the background?

A. Yes, sir. Q. What time was this picture taken?

A. Taken the same day and at the same time.

Q. The 14th day of this month? A. Yes; April.

Q. Is there any difference now on the ground—has the situation changed any from the time the injunction was granted, as far as the street, buildings and pilings are concerned, and at the time this picture was taken? A. Only these same piles as shown here

as tipping out. Q. From the pressure of the debris?

A. Yes; it is the same picture as the other. Q. You

refer now to the piles in the right foreground?

(Testimony of H. S. Worthen.)

A. Yes, sir. Mr. RUSTGARD.—I offer that in evidence. Mr. HELLENTHAL.—Q. Mr. Worthen, When you say the situation in this picture hasn't changed since the time the injunction was granted, you mean as far as the street and the piles in that neighborhood are concerned? A. I understood the question to be that there was no change in the piling—it is the same now as it was then. Q. You know, of course, that the Alaska Juneau Company have done a great deal of work on the upland since then? A. Very little change on either side of the street, only that the other side is filled now. Q. They have built a mill there? A. Yes; way up on the side-hill. Q. A lot of work has been done there which is shown on some of these pictures—you know that there was a lot of work done on the hillside? A. Yes. Q. This picture don't include that hillside on which the mill is? A. I don't think so. Mr. HELLENTHAL.—No objection. (Whereupon said picture was received in evidence and marked Worthen Company's Exhibit No. 12 and hereto attached.) Q. (By Mr. RUSTGARD.) I show you another picture and ask you from what point that was taken and what part of the country here in question does it show? A. It was taken from the platform on this side of the so-called fish-house, used as a dormitory now—bunk-house—looking up towards the Alaska Juneau's tramway and mill. It shows the lower end of the same piling and [158—90] the bulkhead as shown in the other two pictures, only a different view. Q. These piles here are cut off at

(Testimony of H. S. Worthen.)

a certain level or elevation—they are the piles you testified to were cut by your company to put the caps on at the time of the injunction? A. Yes, sir; just before the injunction. Q. When was this picture taken? A. That was taken this noon at 12 o'clock.

Mr. RUSTGARD.—I offer that in evidence. Mr. HELLENTHAL.—No objection. (Whereupon said picture was received in evidence and marked Worthen Company's Exhibit No. 13 and hereto attached.) Q. I show you another picture, Mr.

Worthen, and ask you from what point that was taken, and what country does it represent? A. It was taken from the street at the extreme end of the city limits looking up the hill at the Alaska Juneau tramway that they take their freight up on.

Q. That is the place on the exhibit you have marked warehouse, Alaska Juneau wharf? A. Yes, sir; right in front of the wharf. Q. And the tramway

shown in this picture is the tramway shown on those maps? A. One of the tramways—the southeasterly one—the one they use at the present time. Q. What

time was this picture taken? A. This noon. Mr. RUSTGARD.—I offer this picture in evidence Mr. HELLENTHAL.—I don't know that it is material;

this situation isn't anywhere near the property in controversy; I have no other objection to it if counsel thinks it proves anything. Mr. RUSTGARD.—It is

part of the ground gone over in the testimony—described in the testimony of Mr. Bradley; instead of having the witness testify to what it looks like I prefer to offer photographs. Mr. HELLEN-

(Testimony of H. S. Worthen.)

THAL.—If counsel thinks it is material, I have no objection. (Whereupon said photograph was received in evidence and marked Worthen Company's Exhibit No. 14.) Q. I show you another picture, Mr. Worthen, and ask you from what point it was taken? A. This was taken from practically the same point as the last one except the camera was swung to the right looking towards the southeast. Q. Does that represent a continuation of the country shown in exhibit No. 14—the last picture you looked at, and the country to the south from the Alaska Juneau wharf? A. Southeast; yes, sir. Q. Down the channel? A. Yes. Q. Those cabins shown in this [159—91] picture to the extreme right—are they cabins on the shore line above mean high tide? A. Yes. Q. And below the road? A. There are several below the road and one above—I think there is sort of a little wickey-up back of that cabin. Q. That picture was taken to-day at noon? A. Yes, sir. Mr. RUSTGARD.—I offer that in evidence. Mr. HELLENTHAL.—Q. Mr. Worthen, are you familiar with the cabins shown on this picture? A. In a way—that is, I have been past them. Q. You know this second one shown on this picture belongs to Mr. Bowdie, don't you? A. I do not. Q. You don't mean that that is the property of the Alaska Juneau? A. I don't know—I think, however, that I have heard that story, but I don't know anything about it. Mr. HELLENTHAL.—All right—no objection. (Whereupon said photograph was received in evidence and marked Worthen

(Testimony of H. S. Worthen.)

Lumber Company's Exhibit No. 15.) Q. (By Mr. RUSTGARD.) I will ask you, Mr. Worthen, if the Alaska Juneau Company, or others, should build a wharf out to the deep water—that is, as far as a wharf can practicably be built, over the ground marked by Mr. Bradley on the Alaska Juneau Exhibit “Y” as “Proposed Wharf,” immediately southeast of what is designated as the Jorgenson thousand-foot reservation, what effect, if any, would that have upon your sawmill property? A. The sawmill property would be rendered valueless—we could not use it as a sawmill. Q. It would be out of the question—using the sawmill as a sawmill? A. Yes, sir. Q. To operate it as such it is absolutely essential to get your log booms in from the southeast along the shore? A. Yes, and we have to have space along the shore beyond the mill to hold them. Q. So if a wharf should be built as explained by Mr. Bradley in his testimony, it would mean the closing down of your sawmill property? A. As a sawmill it would. Q. Since you came to Juneau, Mr. Worthen, has Franklin Street, along where it is shown on the waterfront in these maps introduced—has it been a street of general use in the city? A. Yes. Q. Is it traveled much or little as compared with the other general streets in the city? A. Why, I think there is quite a heavy travel over it; of course all the Sheep Creek—Thane—travel goes over it; possibly not so much as Front Street proper—as much as any other than Front Street; of course the heaviest traffic I would consider on any street would be from the city

(Testimony of H. S. Worthen.)

dock to the Pacific [160—92] Coast dock probably. Q. That is about the heart of the city?

A. About that. Q. That street has been generally used as such by the Alaska Juneau during these years? A. Yes, sir; used as a public street since I have been in town.

Cross-examination by Mr. JACK HELLENTHAL.

Q. When did you come here, Mr. Worthen? A. I took charge of the mill in February, 1913. Q. During what period has the street been open—that is, what I am trying to get at? A. The first I ever observed that street was in February, 1913. Q. And the testimony that you are giving with reference to the street was since that time? A. Yes, sir.

Q. The street had already been built when you came here? A. Yes. Q. Now, Mr. Worthen, do you mean to tell this Court that you could not operate your sawmill if that wharf was built there? A. No, sir; not as a practical proposition we could not.

Q. You could not put your logs in that boom in any other way than starting a little above Taku and shooting them down in one straight line? A. I wouldn't make that statement. Q. The only way you can operate your sawmill is to have the boom so situated that you can—A. The only way we can operate successfully is to have the boom along the beach. Q. The wharf wouldn't cover your entire boom? A. It would cover a good deal of it.

Q. How many feet would be still left to you? A. I think about 380 feet, approximately. The

COURT.—It would leave you 380 feet which way?

(Testimony of H. S. Worthen.)

A. Why, from this line—I think it is about 380 feet from there (indicating on map). The COURT.—How about the extension to deep water. A. Well, it doesn't show on this map; the dolphins are along here (indicating); there seems to be sort of a ridge on the bottom of the ocean there (indicating) and going out a little further it drops off very abrupt there. Q. You would have a boom 380 feet long left from the slip extending down channel to the end of the Jorgenson thousand foot reservation marked on exhibit "Y"? A. Approximately that. Q. And you you would have some boom between the slip and the mill? A. No; there isn't any boom between the slip [161—93] and the mill. Q. It is a matter of 20 feet between the slip and the mill, isn't it? A. But you cannot hold logs in there—it sn't a practical way; you couldn't get them by the slip except you take them this way (indicating). Q. You say the reason it would render your mill valueless is because your mill boom wouldn't be large enough? A. The average boom which comes in reaches from here down to here (indicating); at times we have to put them over here (indicating). Q. At times you have to encroach on the Alaska Juneau property with your booms? A. We had some booms in here last year that we broke up on the outside because we couldn't get in as the boom ground is now.

The Worthen Lumber Mills Rests.

[**Testimony of P. R. Bradley, for Plaintiff (in Surrebuttal).**]

SURREBUTTAL.

P. R. BRADLEY, a witness, recalled on behalf of the Alaska Juneau Gold Mining Company, having been previously sworn, testified in surrebuttal as follows:

Direct Examination by Mr. JACK HELLENTHAL.

Q. Mr. Bradley, you are familiar with the situation of what has been termed here in this case Franklin Street, referring to the planked road extending over the tide-flat in front of the A millsite?

A. Yes, sir. Q. Does that road as constructed and maintained by the city in any way obstruct or interfere with your access to deep water from the upland of the A millsite, or adjoining properties?

A. Not in any way at all. Q. If it has any effect, it facilitates it?

A. Yes. Q. If Mr. Worthen's platform were constructed there and lumber piled on it—used by him for private purposes—how could that affect your access?

A. It would interfere with our access.

Q. Cut it off, wouldn't it?

A. Yes. Q. Referring to one of these photographs offered in evidence—you know those houses situated below the wharf—you are familiar with those—referring to the photograph I now hand you (Worthen Company's Exhibit 15), which is a photograph showing some houses along the Government road, taken to the right of the Alaska Juneau wharf; the picture shows one cabin on the upland side of the street and a couple of houses on the lower side of the street; I will ask you to look

(Testimony of P. R. Bradley.)

at that lower [162—94] house there, and property in the vicinity of that house, and state who that belongs to? A. That belongs to Henry Bowdie,

locally known as "Dutch Bowdie." Q. Doesn't belong to the Alaska Juneau Company? A. No.

Q. The waterfront in that locality belongs to Mr. Bowdie? A. Yes, sir. Q. And you have no right

there except the right he has granted you? A. Yes.

Q. And he has granted you no right to build a wharf there? A. No. Q. And that property lies im-

mediately to the south of the Alaska Juneau wharf?

A. To the south a short distance. Q. There may

be a few feet between that and the Alaska Juneau wharf? A. Yes. Q. Now, referring to the land-

slide above the Alaska Juneau wharf and the loose earth shown on that hillside—is there any part of

that mountain side which, in its natural state, before you have cleaned it off and removed the dirt, is not

subject to landslide? Mr. RUSTGARD.—I object to that as not proper rebuttal. Mr. HELLENTHAL.—

It was all brought out by Mr. Rustgard. Mr. RUST-

GARD.—That is opening up an entirely new subject that hasn't been gone into. Mr. HELLENTHAL.—

The purpose of these photographs is for that purpose—I want to explain those photographs. The COURT.

—The objection will be overruled. A. In my opinion, the fact that there are landslides there shows that

such things are possible, and landslides are simply due to the weathering of the rock—the atmospheric

conditions—the alternate freezing and thawing in the spring of the year, and I see no reason why that

(Testimony of P. R. Bradley.)

should not affect one part of the mountain as well as another. Q. You know that landslides have occurred at different points along the whole mountain side there? A. Yes. Q. What have you done and what are you doing to prevent a reoccurrence of land slides? Mr. RUSTGARD.—I object to that as immaterial, irrelevant and improper re-rebuttal. Mr. HELLENTHAL.—I want to ask one question to explain these pictures. The COURT.—Submit to him the photograph you want him to explain and let him explain it—I have no objection to that. Q. Calling your attention to a photograph showing the Alaska Juneau tramway running up the hill and showing loose, sliding material in the picture, I will ask you what the company is doing and how it is preventing [163—95] the landslides from reaching the structures that are being constructed? (Referring to Worthen Company's Exhibit No. 14.) Mr. RUSTGARD.—I object to that as immaterial, irrelevant, and improper redirect or re-rebuttal. The COURT.—He may answer. A. Well, at the present time the precautions that we are taking against landslides is simply to keep out of the path and to remove any loose material while we are in control of the situation, before it gets away from us and moves of its own accord. Q. Below what level or contour do the landslides come from, Mr. Bradley? Mr. RUSTGARD.—I object to that as immaterial, irrelevant and not proper redirect or re-rebuttal. The COURT.—It seems to me, Mr. Hellenenthal, that you have gone into this once. Mr. HELLENTHAL.—

(Testimony of P. R. Bradley.)

No; I haven't gone into that; I don't think. It is a matter which needs a little explanation—these pictures were taken for the purpose of putting in something that looks ugly and I want to explain it. I will withdraw that question for a moment. Q. I call your attention to another picture showing the Alaska Juneau mill and a piece of ground cleared off there at the side of the mill—what has been done on that ground—has that been cleaned off? A. That has been cleaned off for two reasons—one reason is to get a solid foundation for heavy machinery; another reason is, as I have just stated, to control the situation while we could—get the loose stuff away before it comes down on us. Q. Why do you do that—to obviate the danger of landslides? Mr. RUST-GARD.—I object to that as immaterial, irrelevant and improper redirect. The COURT.—I will permit that question, but, Mr. Hellenthal, I think you have gone far enough. A. To remove the danger from rock and landslides. Q. Calling your attention to another photograph that shows the Alaska Juneau mill and some of the ground that has been cleaned off—Mr. Worthen, I think, has been trying to locate the site for the power-house as being near an old tree there; does that show the correct position, or is the position further over, below it? Look at that picture and then look at the map and see if you can straighten it out. A. I cannot say where the tree comes on this drawing, but the power-house site is below the tree. Q. It is below the tree? A. Yes. Mr. HELLENTHAL.—That is all. Mr. RUST-

GARD.—No further questions. [164—96] Mr. HELLENTHAL.—That is, your Honor, our case. The COURT.—The evidence is closed.

[Findings of Fact, Requested by Defendant.]

Thereupon defendant requested the Court to find the following facts, to wit:

1. That at the time of the commencement of this action, for several years prior thereto, defendant was and ever since has been in sole and exclusive possession and occupancy of that certain [165—97] strip of ground below mean high tide, on the northeasterly shore of Gastineau Channel, and adjoining the seaward side of Franklin Street, in the town of Juneau, Alaska; said premises being a strip of ground sixteen (16) feet wide and four hundred (400) feet long, extending from a point on the southwesterly side of said Franklin Street 1555.8 feet in a southeasterly direction from Corner No. 1 of the townsite of Juneau; thence in a southeasterly direction along and adjoining the southwesterly side of Franklin Street, a distance of 400 feet.

2. That Franklin Street, in the town of Juneau, Alaska, is public thoroughfare constructed, established, and maintained as such by the municipal corporation of the town of Juneau, Alaska, and that in its entire width, which is twenty (20) feet, it is below the line of mean high tide of Gastineau Channel, for the length of four hundred (400) feet immediately above the premises or strip of ground heretofore described and in the possession and occupancy of defendant.

3. That the premises above line of mean high tide,

directly across the said street or thoroughfare, known as Franklin Street, from the aforesaid premises occupied by and in the possession of defendant, are held, claimed and occupied by plaintiff corporation by means of certain unpatented millsite locations for which said plaintiff corporation is at present applying for Patent from the United States.

4. That immediately below and to the seaward of the said premises, heretofore described as occupied by and in the possession of defendant, are the navigable waters of Gastineau Channel, which latter, for several years last past has been and is now being used by the defendant for towing and floating saw logs to a certain sawmill plant owned and operated by defendant on the premises immediately to the northwest of the said strip of ground sixteen feet by four hundred feet above described. [166—98]

5. That in case plaintiff should erect a wharf over the navigable waters of Gastineau Channel, in front of and to the seaward of said strip of ground sixteen (16) feet by four hundred (400) feet above described, to the deep waters of said channel, where ocean-going vessels may land and discharge cargoes, the said sawmill plant belonging to defendant on the adjoining premises will be greatly depreciated in value and rendered useless for sawmill purposes, by reason of the obstruction of the natural channel for the towing of logs to said sawmill plant, and the defendant will thereby be irreparably injured in its rights.

6. That plaintiff is the owner of more than 8,000 feet or waterfront on the northeasterly shore of Gastineau Channel, commencing at approximately

1000 feet to the northwest of the premises here in question, and extending approximately 7000 feet along line of mean high tide of Gastineau Channel about 7000 feet, in a southeasterly direction.

7. That plaintiff intends to wash and sluice debris and tailings into the waters of Gastineau Channel, on the seaward side of said Franklin Street, in the town of Juneau, immediately underneath and to the seaward of the said tract sixteen (16) feet by four hundred (400) feet, occupied by defendant as aforesaid, and to that extent obstruct navigation in front of said premises; and also desires to erect a wharf in front of said premises and over the navigable waters of said Gastineau Channel to deep water where ocean-going vessels can discharge cargo; but that the said plaintiff corporation has received no permit from the Secretary of War to deposit such debris or tailings into the said waters of Gastineau Channel, or to erect any such wharf over said waters.

That each of said proposed findings the Court refused, and to each of said refusals defendant duly excepted.

[Conclusions of Law, Requested by Defendant.]

Thereupon defendant requested the Court to file conclusions of law as follows, to wit:

1. That plaintiff, by reason of being the owner of millsite [167—99] locations has no littoral or riparian right of access to navigable water.

2. That plaintiff, by reason of being the upland owner, has no riparian right or littoral right to any of the shore of Gastineau Channel below Franklin Street, at the point where the said Franklin Street

runs on or below the line of mean high tide.

3. That plaintiff corporation has no right separate and apart from the public right to wharf out from the lower side of Franklin Street opposite the premises in controversy in this cause.

4. That plaintiff has no authority to deposit debris or erect a wharf in or over the waters of Gastineau Channel below mean high tide.

5. That plaintiff has not suffered, nor is suffering, nor will suffer any special and peculiar injury different from the injury suffered or sustained by the public generally, by reason of the defendant's possession and occupancy of the strip of ground sixteen (16) feet wide by four hundred (400) feet long, adjoining the lower and seaward side of Franklin Street in front of the premises here in controversy.

6. That plaintiff corporation is not entitled to the relief prayed for in the complaint nor any relief at all.

Each of which conclusions was refused by the Court, and to each of such refusals defendant duly excepted.

**[Exceptions to Certain Findings and to Conclusions
of Law, etc.]**

Defendant also duly excepted to each of the third and fourth findings of facts filed herein and to the following portion of the Court's finding No. 2, to wit: "That on the 23d day of August, 1911, plaintiff became and at all times since has been the owner and in possession and entitled to the possession of those two mining claims situated on Gastineau Channel, a navigable arm of the North Pacific Ocean, near the city

of Juneau, known as the Abe Lincoln and General Grant. Said claims were and are the upland upon which abuts the tide-land involved in this litigation.”
[168—100]

Defendant also excepted to that portion of the Court’s finding No. 2, reading as follows, to wit: “That said tide-land is shoal water lying immediately between said upland and the navigable waters of Gastineau Channel.”

Defendant also excepted to that portion of the Court’s finding No. 9, reading as follows, to wit: “That the plaintiff did not consent to or give the city any right whatever to construct said road, but that the same was constructed without consulting the plaintiff; that the construction and maintenance of said street does not and never did interfere with any of the plaintiff’s rights, and that it is so constructed that plaintiff can wharf out and have access to deep water notwithstanding said plank road.”

Defendant also excepted to each of the Court’s conclusions of law.

Defendant also excepted to the decree entered herein. [169—101]

Worthen L. M. Exhibit No. 3.

(Received in evidence Apr. 15, 1915.)

THIS DEED, made this 24th day of March, 1913, between ALASKA SUPPLY COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Washington, and doing business as a corporation in the District of Alaska, the party of the first part, and WORTHEN LUMBER MILLS, a corporation organized and existing

under and by virtue of the laws of the State of Washington and doing business as a corporation in the District of Alaska, the party of the second part;

WITNESSETH: That the said party of the first part, for and in consideration of the sum of twenty-five thousand dollars (\$25,000) to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold and by these presents does grant, bargain, sell and convey unto the said party of the second part and to its assigns and successors in interest the following described property situate, lying and being in the town of Juneau, Alaska, to-wit:

Jorgenson's saw-mill and blacksmith shop site. Commencing at the northwest corner of lot which is situated in the northeast side of Franklin St. Extension, whence corner No. 1 (N. E. Corner) of millsite property bears north $34^{\circ} 26'$ west 215 ft. distant; thence running north $56^{\circ} 14'$ east 24 ft. distant to the northeast corner of lot; thence south $31^{\circ} 30'$ east 22 ft. distant to the southeast corner of lot; thence south $56^{\circ} 14'$ west 24 feet distant to the southwest corner of lot; thence north $31^{\circ} 30'$ west 22 ft. distant to the northwest corner of lot and the place of beginning.

Boarding house site. Commencing at the northwest corner of lot which is situated on the northeast side of Franklin St. Extension, whence the northeast corner of millsite property bears north $32^{\circ} 57'$ west 356.4 ft. distant; thence running north $58^{\circ} 30'$ east 31 ft. distant to the northeast corner of the lot; thence south $31^{\circ} 30'$ east 41.9 ft, distant to the southeast corner of lot; thence south $38^{\circ} 30'$ west 30 ft. distant

to the southwest corner of the lot; thence along the northeast side of Franklin St. Extension 41.9 ft. distant to the northwest corner of lot and the place of beginning. [170]

Jorgenson mill and wharf property. Commencing at the northeast corner of millsite property identical with corner No. 4 of Jorgenson property on the southeast end line of oil house extended and on the northeast side of Franklin St. Extension, whence corner No. 1 of the townsite of Juneau bears north $42^{\circ} 50'$ west 701.30 ft. distant; thence south $27^{\circ} 13'$ west 55.20 ft. to a point 4 feet southwest of the southwest corner of said oil house; thence north $63^{\circ} 37'$ west 26.6 feet to a point in front of said oil house; thence south $44^{\circ} 02'$ west 121.7 feet to the northwest corner of mill property and on the southwest side of Shattuck's wharf; thence south $33^{\circ} 31'$ east 60 feet along mill property; thence south $44^{\circ} 02'$ west to the deep and navigable water of Gastineau Channel; and

Commencing at the northeast corner of millsite property and running thence south $23^{\circ} 58'$ east 71.20 ft. to the northeast corner of mill dry house; thence along the present southwest side of Franklin St. south $31^{\circ} 20'$ east 328 ft. to a point on Franklin St.; thence south $31^{\circ} 56'$ east 468 ft. along the southwest side of Franklin St. to a point on Franklin St.; thence south $39^{\circ} 03'$ east 368.6 ft. along the southwest side of Franklin St. to the southeast corner of wharf property; thence south $50^{\circ} 57'$ west to the deep and navigable water of Gastineau Channel;

All courses described from the true meridian. Magnetic variation $32^{\circ} 00'$ east of north.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD all and singular the said premises, together with the appurtenances and privileges thereunto incident, unto the said party of the second part, its assigns and successors in interest forever.

IN WITNESS WHEREOF the said Alaska Supply Company has caused this instrument to be signed by its president and its corporate seal to be thereto affixed and attested by its secretary, all on the day first above written.

[Corporate Seal.]

ALASKA SUPPLY COMPANY,

By H. SHATTUCK,

Its President.

Attest: J. H. KING,

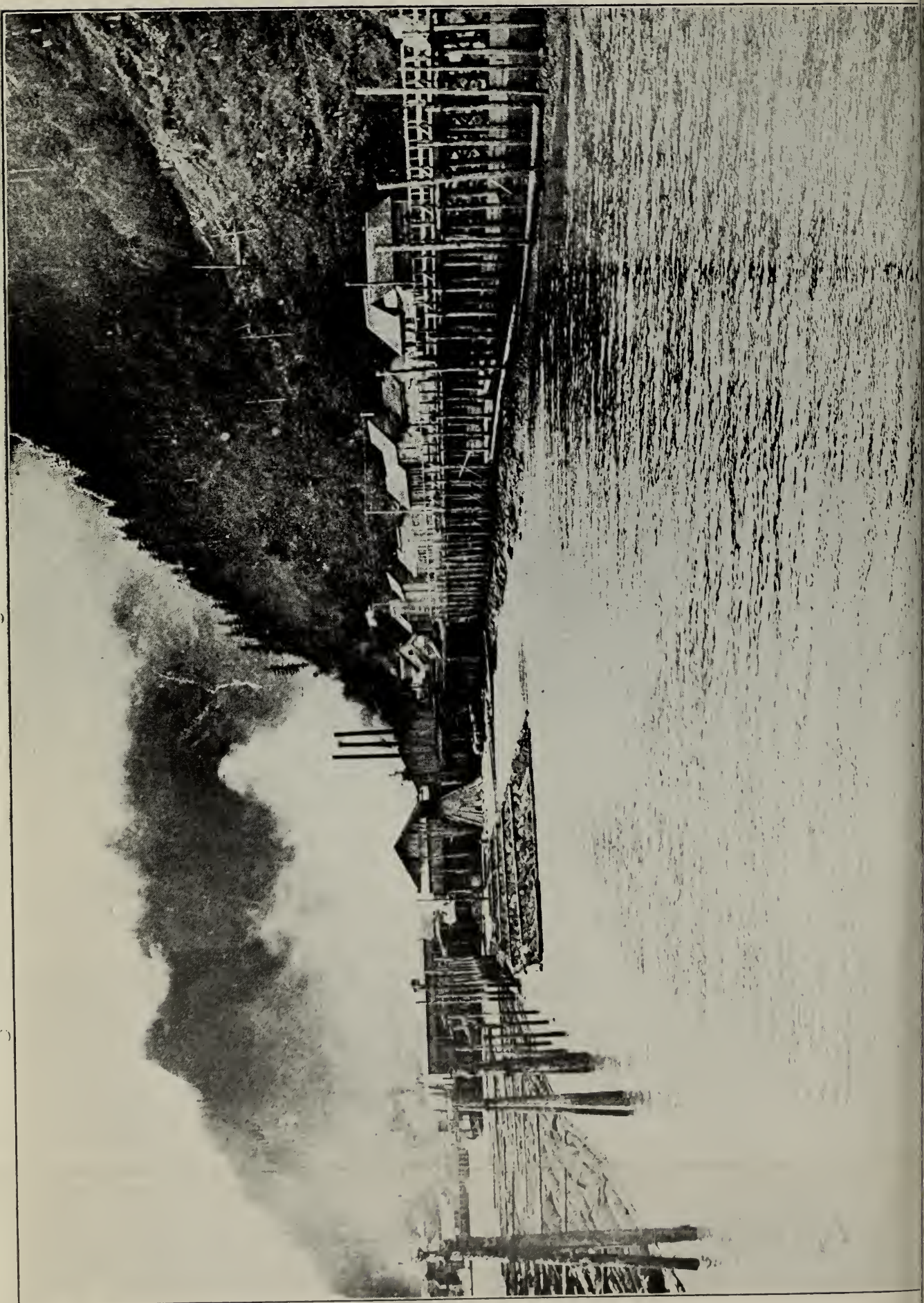
Its Secretary.

Signed, sealed and delivered in presence of:

W. S. BAYLESS.

M. M. CHARM. [171]

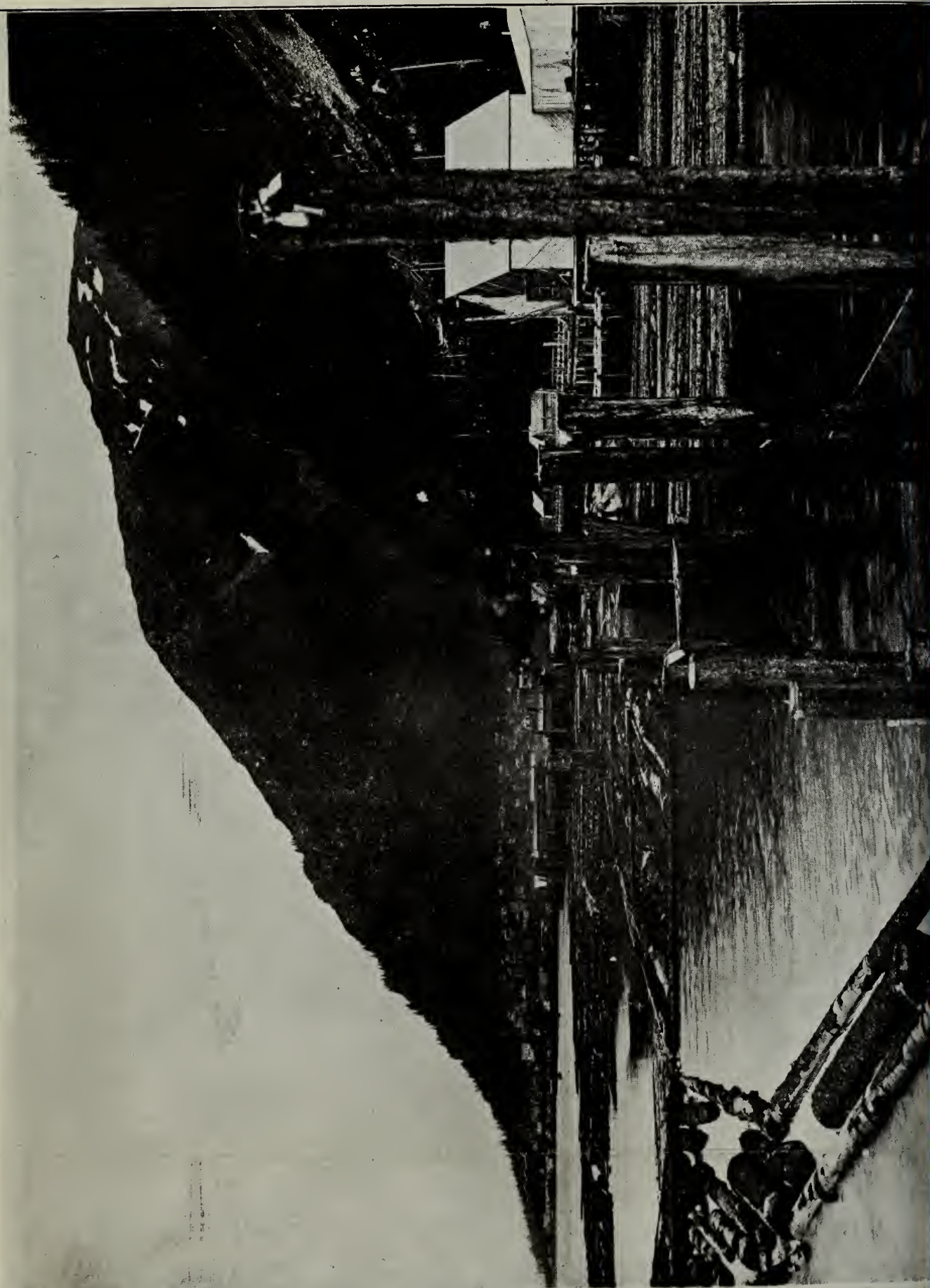
[Worthen Lumber Mills Exhibit No. 4—
Photograph.]

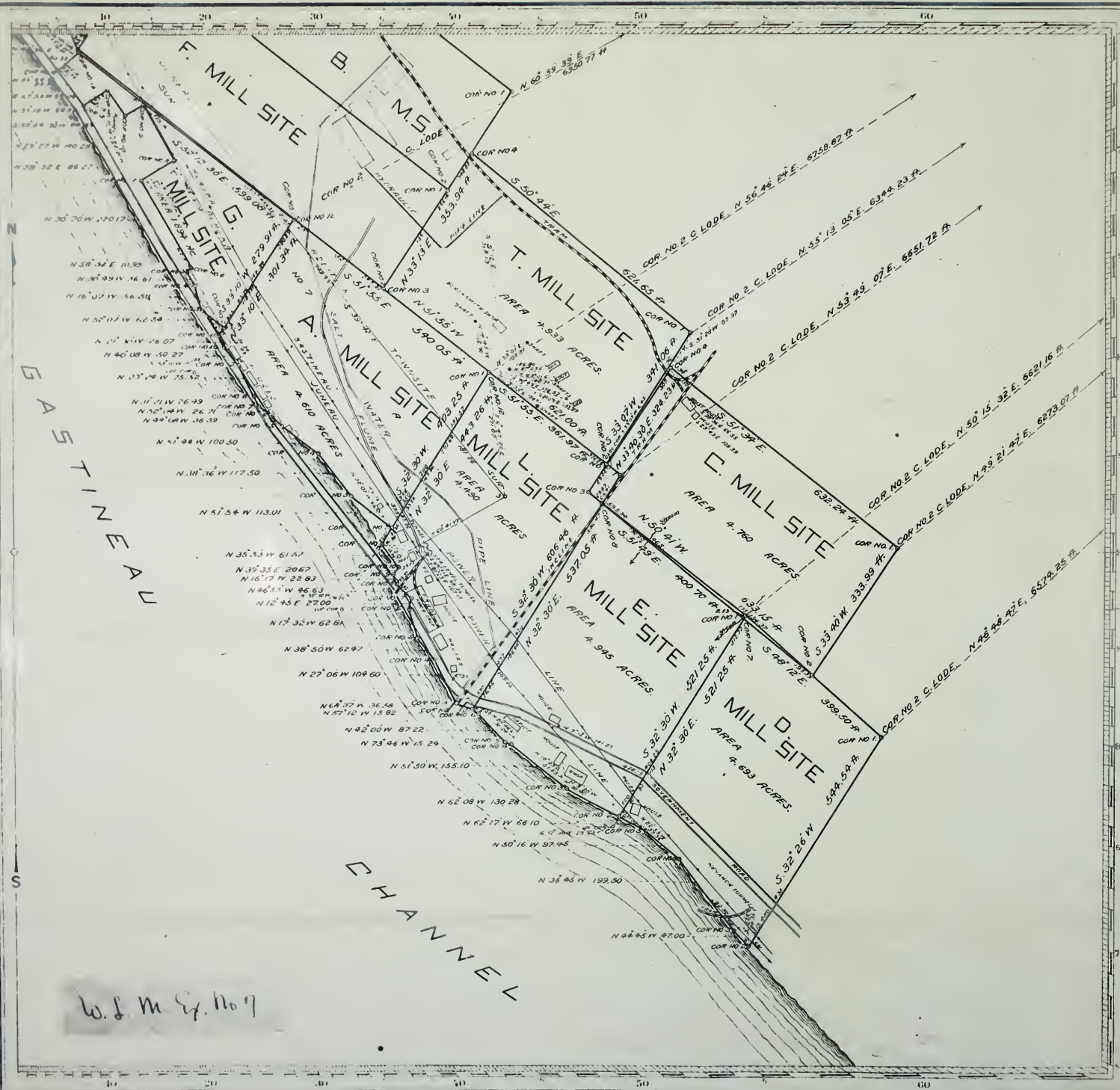


[Worthen Lumber Mills Exhibit No. 5—
Photograph.]



[Worthen Lumber Mills Exhibit No. 6—
Photograph.]





Claim located

19

Mineral Survey No. 982 A and B

Juneau, ~~LOT No.~~

Land District.

PLAT

OF THE CLAIM OF

KNOWN AS THE

IN _____ MINING DISTRICT,
COUNTY _____Containing an Area of _____ Acres.
Scale of _____ Feet to the inch.
Variation _____

SURVEYED _____ 19 _____ BY _____

U.S. Deputy Mineral Surveyor

The Original Field Notes of the Survey of the Mining Claim of
known as the _____

from which this plat has been made under my direction, have been examined and approved, and are on file in this Office, and I hereby certify that they furnish such an accurate description of said Mining Claim as will, if incorporated into a patent, serve fully to identify the premises, and that such reference is made therein to natural objects or permanent monuments as will perpetuate and fix the locus thereof. I further certify that Five hundred Dollars worth of labor has been expended or improvements made upon said Mining Claim by claimant _____ or _____ grantors and that said improvements consist of _____

that the location of said improvements is correctly shown upon this plat, and that no portion of said labor or improvements has been included in the estimate of expenditures upon any other claim.

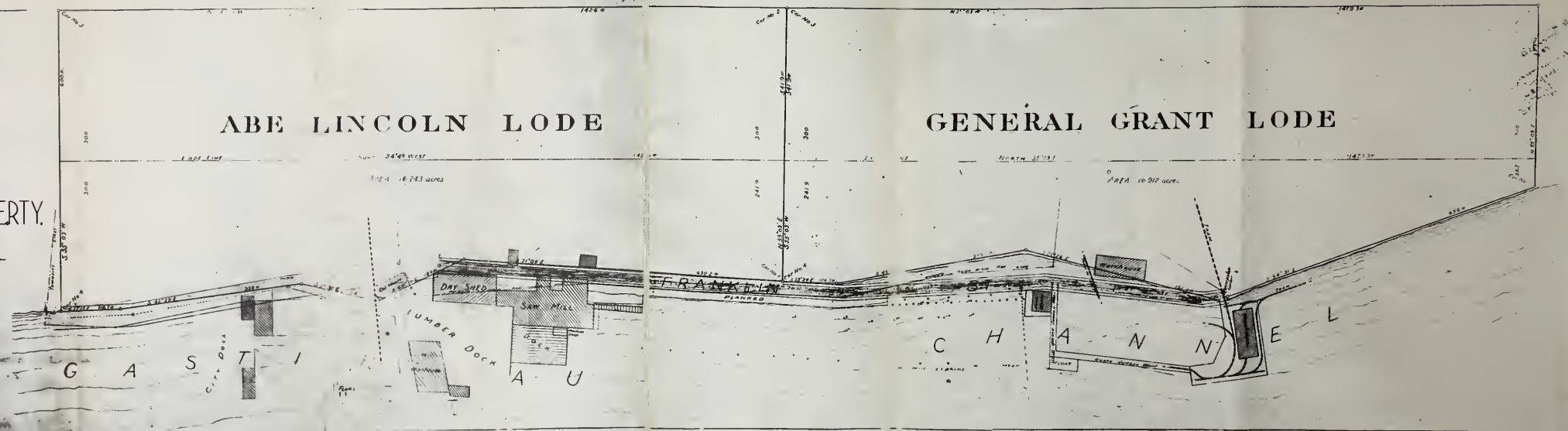
And I further certify that this is a correct plat of said Mining Claim made in conformity with said original field notes of the survey thereof, and the same is hereby approved.

U.S. Surveyor General's Office.

U.S. Surveyor General for

MAP OF
 WORTHEN LUMBER MILLS PROPERTY.
 JUNEAU, ALASKA.
 — 1914. —

Scale 1 inch = 500'



Worthen L. M. Exhibit No. 9.

(Received in evidence Apr. 17, 1915.)

ORDINANCE NO. 87.

AN ORDINANCE PROVIDING FOR THE EXTENSION, LAYING OUT AND OPENING OF FRANKLIN STREET IN THE CITY OF JUNEAU.

The City Council of the City of Juneau doth ordain as follows:

Section 1. That Franklin Street, in the City of Juneau, be and the same is hereby opened and laid out from the point where the same intersects with Front Street in the said City of Juneau to Corner No. 1 of the corporate survey of the City of Juneau; that said Franklin Street as so laid out and opened is described as follows:

Commencing at Corner No. 6 Survey No. 7; thence N. 57 deg. 52 min. E. 17.0 feet to point on easterly line of Franklin Street; thence S. 44 deg. 00 min. E. 46.6 feet to point on easterly line of Franklin Street; thence S. 37 deg. 20 min. E. 298.11 feet to point on easterly line of Franklin Street; thence S. 56 deg. 37 min. E. 150.0 feet to point on easterly line of Franklin Street; thence S. 32 deg. 20 min. E. 449.36 feet to point on easterly line of Franklin Street, whence Cor. No. 2 U. S. S. No. 7 bears S. 57 deg. 52 min. E. 15.0 feet distant; thence S. 38 deg. 06 min. E. 425.5 feet to Corner A; thence S. 47 deg. 07 min. E. 644.8 feet to Corner B; thence S. 57 deg. 52 min. W. 10.0 feet to point thence S. 35 deg. 23 min. E. 233.5 feet to point; thence S. 33 deg. 04 min. E. 548.5 feet

to Corner B; thence S. 50 deg. 08 min. E. 307.0 feet to Corner F; thence S. 38 deg. 10 min. E. 172.5 feet to Corner G; thence S. 23 deg. 08 min. #. 303.0 feet to Corner H; identical with corner No. 1 of the [177] corporate survey of the City of Juneau; thence S. 57 deg. 52 min. W. 20.0 feet to point on shore of Gastineau Channel; thence N. 23 deg. 08 min. W. 303.0 feet to point on shore of Gastineau Channel; thence N. 38 Deg. 10 min, W. 172.5 feet to point on shore of Gastineau Chanel; thence N. 50 deg. 08 min. W. 307.0 feet to point on shore of Gastineau Channel; thence N. 33 deg. 04 min. W. 548.5 feet to Corner D on shore of Gastineau Channel; thence N. 35 deg. 23 min. W. 233.5 feet to Corner C on shore of Gastineau Channel; thence S. 57 deg. 52 min. W. 10.0 feet to point on Gastineau Channel; thence N. 47 deg. 07 min. W. 644.08 feet to point of Gastineau Channel; whence Cor. A. bears N. 57 deg. 52 min. E. 40.0 feet distant; thence N. 38 deg. 06 min. W. 425.5 feet to point whence Cor. No. 2 U. S. No. 7 bears N. 57 deg. 52 min. E. 25.0 feet distant; thence N. 32 deg. 20 min. W. 449.36 feet to point on shore of Gastineau Channel; whence Corner No. 4 U. S. S. No. 7 bears N. 57 deg. 52 min. E. 35.0 feet distant; thence S. 57 deg. 52 min. W. 10 feet to point on shore line of Gastineau Channel; thence N. 26 deg. 37 min. E. 150.0 feet to point on shore line of Gastineau Channel, whence Corner No. 5 U. S. S. No. 7 bears N. 57 deg. 52 min. E. 45.0 feet distant; thence N. 37 deg. 20 min. W. 298.11 feet to point on shore line of Gastineau Channel; thence N. 44 deg. 00 min. E. 28.8 feet to intersection of Front

Street with Franklin Street; thence N. 81 deg. 3 min. W. 9.4 feet to a point on Front Street, established by Elias Rund in April 1906; thence N. 40 deg. 39 min. E. 38.19 feet to Corner No. 6 U. S. S. No. 7, the place of beginning.

Section 2. All Ordinances and parts of Ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict. [178]

Section 3. This Ordinance shall be published in the Record-Miner, a newspaper published in the City of Juneau, on the following named day, to wit: July 24, 1907, and shall take effect and be in force from and after the date of its passage.

Passed by the Common Council of the City of Juneau this 19th day of July, A. D. 1907.

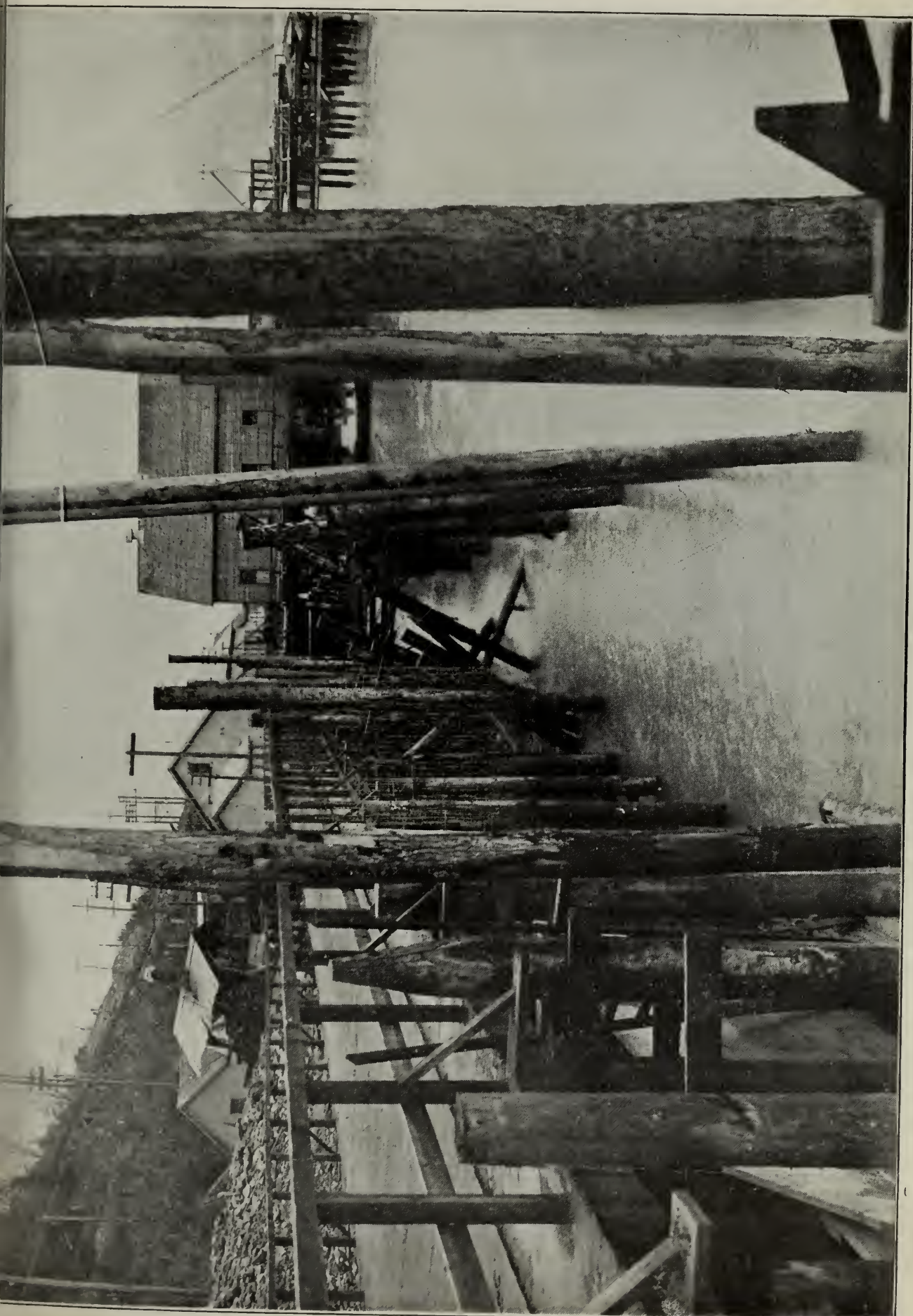
E. R. JAEGER,

President pro tem of the Town Council of the City of Juneau and Ex-officio Mayor of the City of Juneau.

[Seal] Attest: NATHANAEL GREENE,
City Clerk and clerk of the Town Council.

Copied from the "Daily Record-Miner" of July 24, 1907. [179]

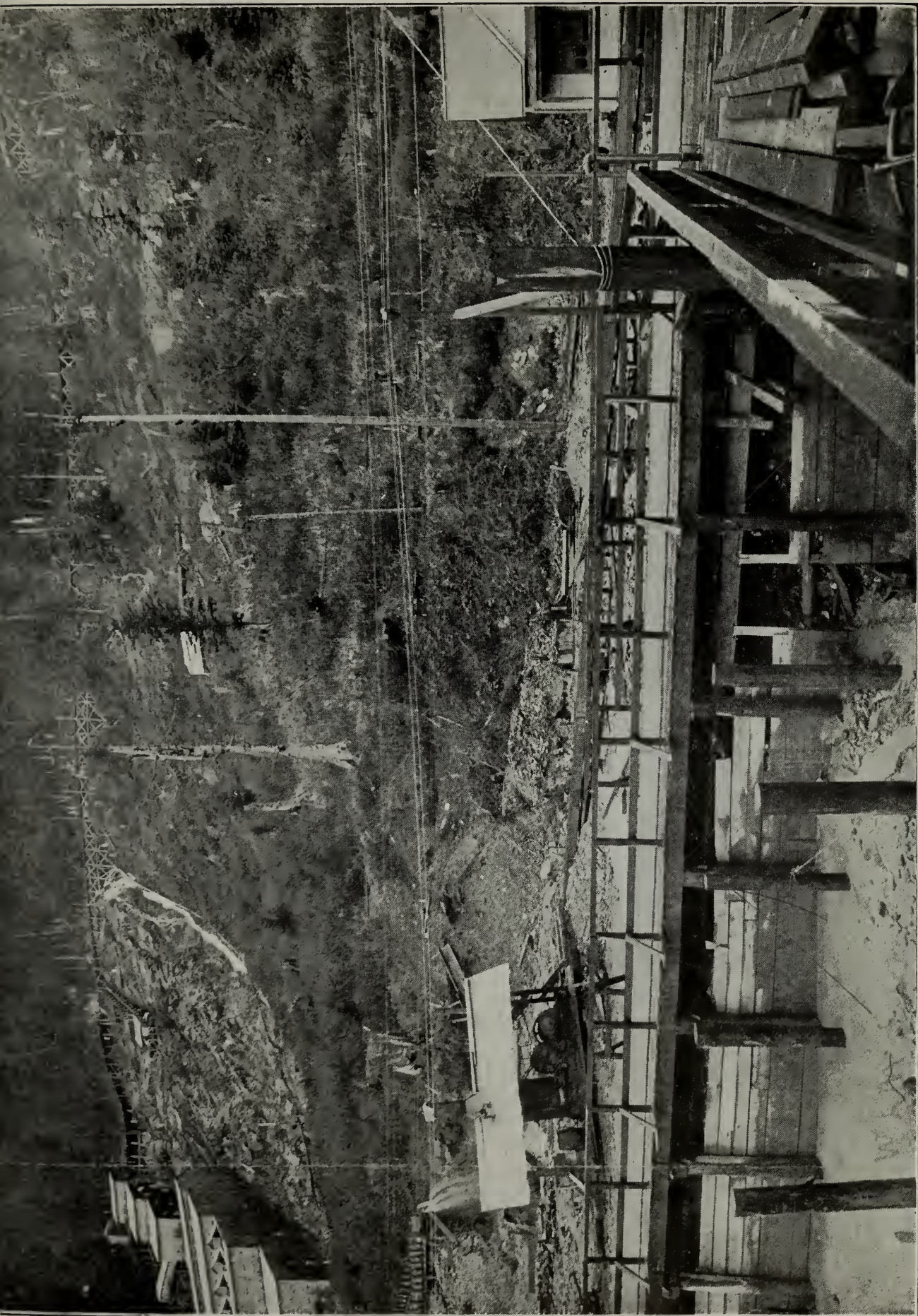
[Worthen Lumber Mills Exhibit No. 11—
Photograph.]



[Worthen Lumber Mills Exhibit No. 12—
Photograph.]



[Worthen Lumber Mills Exhibit No 13—
Photograph.]



[Worthen Lumber Mills Exhibit No. 14—
Photograph.]



[Worthen Lumber Mills Exhibit No. 15—
Photograph.]



Alaska Juneau Company's Exhibit "T."

(Received in evidence, Apr. 16, 1915.)

District of Alaska,
Juneau,—ss.

The within instrument was filed for record at 1 o'clock P .M. July 26, 1911, and duly recorded in Book 11 of Placers on Page 1 of the records of said District. G. C. Winn, District.

NOTICE OF LOCATION.

Notice is hereby given that the undersigned, having complied with the requirements of Chapter Six of Title thirty-two of the Revised Statutes of the United States, and the local customs, laws and regulations, has located an area of five acres for the "A" millsite, situated in the Harris Mining District, District of Alaska and described as follows: Beginning at Cor. #1 identical with Cor. #4 of the "L" Millsite, thence S. 33 deg. 15' W. 403 feet to Cor. #2, thence N. 53 deg. W. 540 feet to Cor. #3, thence N. 33 deg. 15' E. 403 feet to Cor. #4, thence S. 52 deg. E. 540 feet to Cor. #1 the place of beginning.

J. Z. BAYLESS,

Locator.

July 16, 1911, Located.

Attest, W. R. LINDSAY.

United States of America,
Territory of Alaska,
Juneau Precinct,—ss.

I do hereby certify that the foregoing is a true and correct copy of the original records as taken

from Book 11 Placers on page 1, of the records of Juneau Recording Precinct, Alaska, and the whole thereof.

Dated this 16th day of April, 1915.

[Commissioner's Seal.]

JOHN B. MARSHALL,
Commissioner & Ex-Off. Dist. Recorder. [186]

Alaska Juneau Company's Exhibit "V."

(Received in evidence, Apr. 16, 1915.)

THIS INDENTURE, made this 22nd day of July in the year of our Lord one thousand nine hundred and eleven, Between J. Z. Bayless the party of the first part, and the Alaska Juneau Gold Mining Company the party of the second part:

WITNESSETH: That the said party of the first part, for and in consideration of the sum of One 00/100 (\$1.00) Dollars lawful money of the United States of America to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged does by these presents remise, release and forever quit-claim unto the said party of the second part, and to its successors and assigns, the following described tract, lot or parcel of land, situated, lying and being in Harris Mining District, District of Alaska, particularly bounded and described as follows, to wit:

Known as the "A" millsite, lying on the shore of Gastineau Channel, about one half mile south east of the City of Juneau, and further described as follows:

Beginning at Cor. #1, identical with Cor. #4 of the "L" millsite, thence S. 33 deg. 15' W. 493 feet to

Cor. #2, thence N. 52 deg. W. 540 feet to Cor. #3, thence N. 33 deg. 15' E. 403 feet to Cor. #4, thence S. 52 Deg. E. 540 feet to Cor. #1, the place of beginning.

Together with and all singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold, all and singular, the said premises, together with the appurtenances unto the said party of the second part, and to its successors and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

J. Z. BAYLESS. (Seal)

Signed, Sealed and Delivered in presence of

C. W. RUSSEL.

NEAL C. HAWLEY. [187]

District of Alaska, U. S. A.,—ss.

THIS IS TO CERTIFY, that on this 22nd day of July, A. D., 1911, before me, James Christoe, Notary Public in and for the District of Alaska duly commissioned and sworn, personally came J. Z. Bayless to me known to be the individual described in and who executed the within instrument and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

[Seal] JAMES CHRISTOE,
Notary Public in and for the District of Alaska, residing at Treadwell.

Filed for record March 13, 1911, recorded Bk. 23 Deeds, Pg. 441.

Territory of Alaska,
Juneau Recording Precinct,—ss.

I do hereby certify that the foregoing is a true and correct copy of the original records as taken from Book 23 of Deeds on page 441 of the records of the Juneau Recording District, Alaska, and the whole thereof.

Dated this 16th day of April, 1915.

[Seal] JOHN B. MARSHALL,
U. S. Commissioner and Ex-officio District Recorder. [188]

Alaska Juneau Company's Exhibit "X."

(Received in evidence, Apr. 16, 1915.)

THIS INDENTURE, made this 22nd day of August, A. D., 1914, between Jimmie Bean, as an individual, and as chief of the Taku Tribe of Natives, and Mrs. Sallie Bean, his wife, formerly the wife of Chief Johnson, first parties; and the Alaska Juneau Gold Mining Company, a corporation, second party:

WITNESSETH: That whereas, the first parties were the owners of a certain tract of ground hereinafter more definitely described which said tract of ground together with the tide lands lying in front

Cor. #2, thence N. 52 deg. W. 540 feet to Cor. #3, thence N. 33 deg. 15' E. 403 feet to Cor. #4, thence S. 52 Deg. E. 540 feet to Cor. #1, the place of beginning.

Together with and all singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold, all and singular, the said premises, together with the appurtenances unto the said party of the second part, and to its successors and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

J. Z. BAYLESS. (Seal)

Signed, Sealed and Delivered in presence of

C. W. RUSSEL.

NEAL C. HAWLEY. [187]

District of Alaska, U. S. A.,—ss.

THIS IS TO CERTIFY, that on this 22nd day of July, A. D., 1911, before me, James Christoe, Notary Public in and for the District of Alaska duly commissioned and sworn, personally came J. Z. Bayless to me known to be the individual described in and who executed the within instrument and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

[Seal] JAMES CHRISTOE,
Notary Public in and for the District of Alaska, residing at Treadwell.

Filed for record March 13, 1911, recorded Bk. 23 Deeds, Pg. 441.

Territory of Alaska,
Juneau Recording Precinct,—ss.

I do hereby certify that the foregoing is a true and correct copy of the original records as taken from Book 23 of Deeds on page 441 of the records of the Juneau Recording District, Alaska, and the whole thereof.

Dated this 16th day of April, 1915.

[Seal] JOHN B. MARSHALL,
U. S. Commissioner and Ex-officio District Recorder. [188]

Alaska Juneau Company's Exhibit "X."

(Received in evidence, Apr. 16, 1915.)

THIS INDENTURE, made this 22nd day of August, A. D., 1914, between Jimmie Bean, as an individual, and as chief of the Taku Tribe of Natives, and Mrs. Sallie Bean, his wife, formerly the wife of Chief Johnson, first parties; and the Alaska Juneau Gold Mining Company, a corporation, second party:

WITNESSETH: That whereas, the first parties were the owners of a certain tract of ground hereinafter more definitely described which said tract of ground together with the tide lands lying in front

of the same have been owned and possessed by the first parties ever since the year 1881 when gold was first discovered near Juneau; that they have been in the actual and continued possession of the said ground ever since; that they have erected boat houses at various places on the beach in front of said ground and have been in the possession and use of said beach between the ordinary high tide *and the* line and the line of low tide ever since the year 1881, and have used the said beach for the purpose of ingress and egress to deep water as well as for other purposes, including places for boat houses, skidways for boats and canoes, and other uses.

And, Whereas, on the 30th day of April, A. D. 1913, the first parties made a certain indenture to the second party in which certain premises were indefinitely described, these presents is intended to more definately describe said premises.

NOW, THEREFORE, in consideration of three hundred dollars (\$300.00) paid to the first parties by the second party, the receipt whereof is hereby acknowledged, the first parties do by these presents, grant, bargain, sell, convey and confirm unto the second party, its successors and assigns, that certain parcel of ground, as well as the tide lands lying in front of and abutitng upon the same situate within the incorporated limits of the town [189] of Juneau, Alaska, and a short distance Southerly from the townsite limits of said town of Juneau, which said premises are more definately described as follows, to wit:

Commencing at Cor. No. 1 of the Abe Lincoln

Lode mining claim, U. S. Survey No. 597, which is identical with Cor. No. 4 of the General Grant lode mining claim U. S. Survey No. 597, from which U. S. L. M. No. 1 bears S. 17 deg. 02' E. 6851.7 ft. thence S. 33 deg. 34' E. 106.5 ft; thence S. 45 deg. 31' E. 303.7 ft; thence N. 54 deg. 39' E. 150 ft; thence N. 39 deg. 43' W. 533.59 ft; thence S. 58 deg. 51' W. 150 ft. thence S. 31 deg. 09' E. 138 ft. to point of beginning.

Together with all the tide lands adjacent to and lying between the said described upland and the deep water of Gastineau Channel, with the right of ingress and egress, as well as all littoral and riparian rights, and all and singular the tenements, heridataments and appurtenances belonging to said property or in anywise appertaining to the same, and the reversions, remainders, rents, issues and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances unto the said second party, its successors and assigns forever.

In Witness Whereof, the said first parties have hereunto set their hands and seals the day and year in this instrument first above written.

his

JIMMIE X BEAN. (Seal)

mark

his

JIMMIE X BEAN. (Seal)

mark

As chief of the Taku Tribe of Natives.

her

SALLIE X BEAN. (Seal)

mark

Witness to Jimmie Bean's signature by mark:

J. A. HELLENTHAL.

PETER LAWRENCE.

Witness to Sallie Bean's signature made by mark:

S. HELLENTHAL,

PETER LAWRENCE. [190]

United States of America,

Territory of Alaska,—ss.

On this 22d day of August, A. D., 1913 before me, personally appeared Jimmie Bean, to me known to be the individual described in and who executed the foregoing instrument and the said Jimmie Bean acknowledged to me that he executed the same as his free and voluntary act, both as Chief of the Taku Tribe of Natives, and in his individual capacity, for the uses and purposes therein expressed.

[Notarial Seal]

SIMON HELLENTHAL,

Notary Public for Alaska.

My commission expires November 29, 1913.

United States of America,

Territory of Alaska,—ss.

On this 25th day of August, A. D. 1913, before me personally appeared Sallie Bean, to me known to be the individual described in and who executed the foregoing instrument and the said Sallie Bean acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and

purposes therein expressed.

[Notarial Seal] SIMON HELLENTHAL,
Notary Public for Alaska.

My commission expires November 29, 1913.

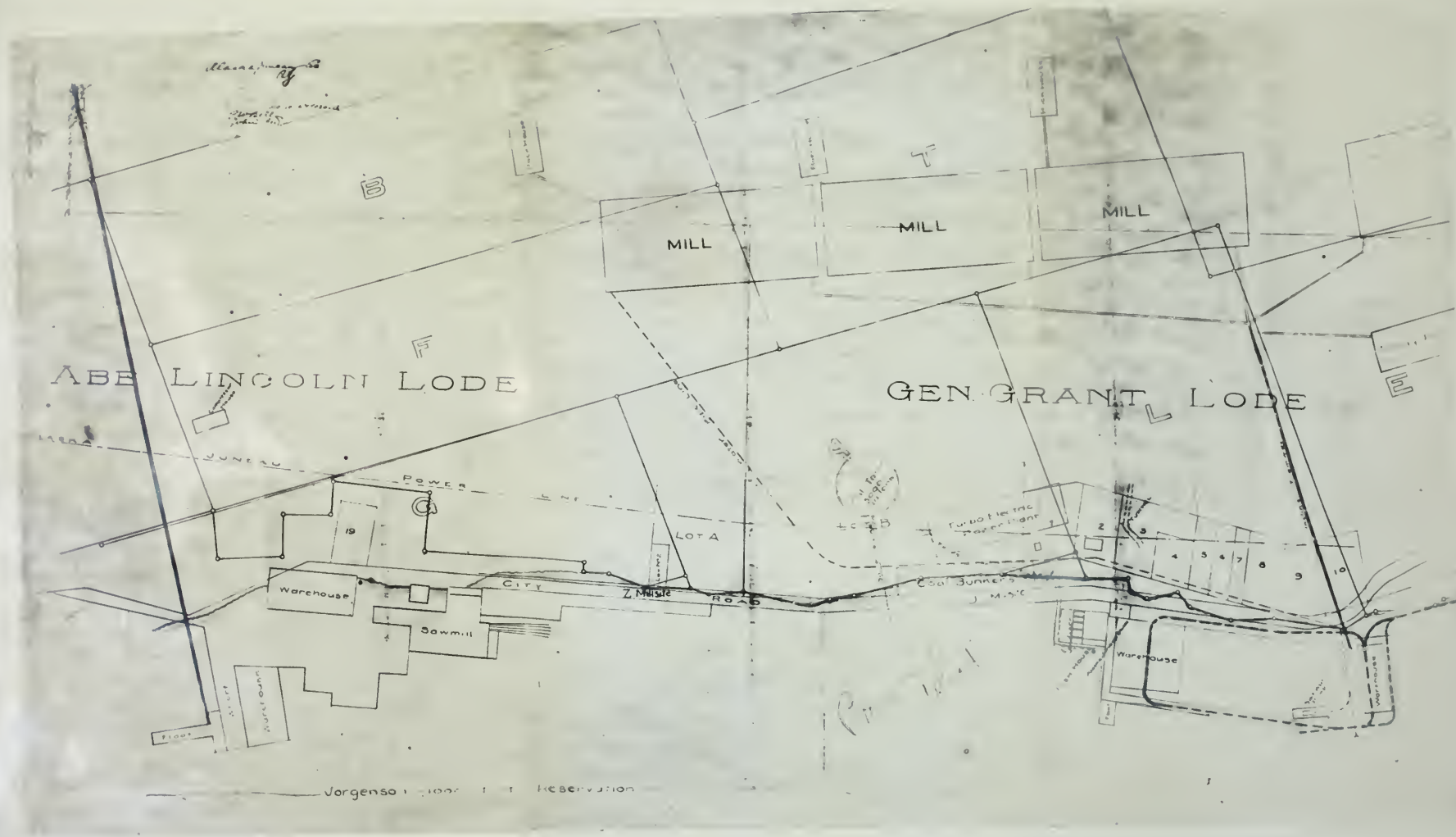
Filed for record August 25, 1913, and recorded 24
Deeds, pp. 99.

United States of America,
Territory of Alaska,—ss.

I do hereby certify that the foregoing is a true and
correct copy of the original records as shown from
Book 24 of Deeds on Page 99, records of the Juneau
Recording District, Alaska, and the whole thereof.

Dated this 16th day of April, 1915.

[Seal] JOHN B. MARSHALL,
U. S. Commissioner and Ex-officio District Recorder.
[191]



Alaska Juneau Company's Exhibit "Z."

(Received in evidence Apr. 16, 1915.)

THIS INDENTURE, made this 1st day of May, A. D. 1913, between Fanny Johnson, Jimmie Johnson, Thomas Johnson and Louisa Johnson, Alaska natives, first parties; and the Alaska Juneau Gold Mining Company, a corporation, second part;

WITNESSETH: That for and in consideration of the sum of Seven Hundred and Ten Dollars (\$710.00), the receipt whereof is hereby acknowledged, do by these presents, remise, release and forever quitclaim unto the said second part, its successors and assigns, the following described tracts or parcels of land situate, lying and being within the corporate limits of the town of Juneau, Territory of Alaska, and a short distance southerly from the townsite limits of said town, a more particular description as follows, to wit:

Beginning at the S. S. corner, a rock 30"x14"x8 ins. *whone* a copper pin set in drill hole in boulder 10 ft. long, 4 ft. high, bears S. 30° 59' W. 378.40 ft. distant; thence N. 48° 30' E. 135.4 ft. to the S. E. corner; thence N. 31° 30' W. 70.6 ft. to the S. E. corner; thence S. 48° 30' W. 128.5 ft. to the N. W. corner; whence cabin 10x12 ft. bears N. 27° 12' E. 66.6 ft. distant; thence S. 35° 55' E. 71.0 ft. to the S. W. corner or place of beginning, containing on area of 0.213 acres. Magnetic variation 31° 20' E. and courses described from the true meridian.

Together with the littoral rights and right of in-

gress and egress to and from deep water.

And also the following described parcel:

Commencing at a point of the meander line of Gastineau Channel, from which Cor. No. 6 of the General Grant Lode, U. S. Survey No. 597, as surveyed for patent, bears N. 20° 26' W. 9.8 ft.; thence N. 57° 7' E. 108 ft.; thence N. 20° 26' W. 10.4 ft.; thence N. 45° 31' W. 79.3 ft.; thence S. 54° 39' W. 106.7 ft. to mean high tide line of Gastineau Channel; thence S. 45° 31' E. 74.5 ft. to said Cor. No. 6 of General Grant Lode; thence S. 20° 26' E. 9.8 ft. to place of beginning. [193]

Together with the right or ingress and egress to and from deep water and the littoral rights.

And all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversions, remainders, rents, issues and profits thereof.

To have and to hold, all and singular, the said premises, together with the appurtenances unto the said second part, its successors and assigns forever.

IN WITNESS WHEREOF, the said first parties have hereunto set their hands and seals the day and year in this instrument first above written.

her

FANNIE X JOHNSON. (Seal)

mark

his

JIMMIE X JOHNSON. (Seal)

mark

TOM JOHNSON. (Seal)

LOUISA JOHNSON. (Seal)

Signed, sealed and delivered, and the crosses made in the presence of:

R. E. PENGLASE.

S. HELLENTHAL.

United States of America,
Territory of Alaska,—ss.

On this 1st day of May, 1913, before me, personally appeared Fannie Johnson, Jimmie Johnson and Thomas Johnson, to me known to be the parties described in and who executed the foregoing deed, and acknowledged to me that they each of them signed and sealed the same as his and her free and voluntary act and deed for the uses and purposes therein expressed.

[Notarial Seal] SIMON HELLENTHAL,
Notary Public for Alaska.

United States of America,
Territory of Alaska,—ss.

On this 8th day of May, A. D. 1913, before me, personally appeared Louisa Johnson, to me known to be the person described in and who executed the foregoing instrument and acknowledged to me that she signed and sealed the same as her free and voluntary act and deed for the uses and purposes herein expressed.

[Notarial Seal] SIMON HELLENTHAL,
Notary Public for Alaska. [194]

Filed for record at 10 o'clock A. M., May 8, 1913,
and recorded in Book 24 Deeds, page 10.

G. C. WINN,
District Recorder.

United States of America,
Territory of Alaska,—ss.

I do hereby certify that the foregoing is a true and correct copy of the original records as taken from Book 24 of Deeds, on page 10, Records of Juneau Recording District, Alaska, and the whole thereof.

Dated this 16th day of April, 1915.

[Seal] JOHN B. MARSHALL,
U. S. Commissioner and Ex-officio District Recorder.
[195]

Alaska Juneau Company's Exhibit "A-1."

(Received in evidence Apr. 16, 1915.)

THIS INDENTURE, made this 25th day of July, A. D., 1912, between JOHN JACKSON, an Alaskan Native, the first party, of Juneau, Alaska, and the ALASKA JUNEAU GOLD MINING COMPANY, a corporation, the second party;

WITNESSETH: The *the* first party, for and in consideration of the sum of Six Hundred and Five (\$605.00), money of the United States of America, to him in hand paid by the party of the second part, or second party, the receipt whereof is hereby acknowledged, does by these presents remise, release and forever quit-claim unto the party of the second part, or second party, its successors and assigns, the following described parcel of land situated on the meander line of Gastineau Channel and adjoining the townsite of Juneau on the South East, and about a quarter of a mile from the South East boundary of

the townsite, in the District of Alaska, Juneau Recording District, a more particular description is as follows, to wit:

Commencing at the N. W. Corner of Lot —; whence cable pole bears N. $25^{\circ} 30'$ W. 112 ft. distant, and N. W. corner of house 16 by 24 ft. square bears N. $79^{\circ} 30'$ E. 11.50 ft. distant; thence N. $59^{\circ} 30'$ E. 100 ft. to N. E. corner of lot; thence S. $35^{\circ} 30'$ E. 58 ft. to S. E. corner of lot; thence S. $59^{\circ} 30'$ W. 100 ft. to S. W. corner of lot and meander line of Gasitneau Channel, thence N. $35^{\circ} 30'$ W. 58 ft. along the meander line of Gastineau Channel to N. W. corner of lot and the place of beginning, containing an area of 14 acres, more or less. Magnetic variation $30^{\circ} 00'$ E. of N., together with the tide lands and water-front privileges lying in front of and used in connection with the above premises.

Together with, all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the remainders, reservoirs, issues and profits thereof. [196]

To have and to hold, all and singular, the said premises, together with the appurtenances unto the said second party, its successors and assigns, forever.

IN WITNESS WHEREOF, said first party has hereunto set his hand and seal on the day and year first in this instrument above written.

his

JOHN X JACKSON. (Seal)

mark

Signed, sealed and delivered in the presence of:

ROBT. A. KINZIE.

S. HELLENTHAL.

United States of America,
Territory of Alaska,—ss.

THIS IS TO CERTIFY, that on this 25th day of July, A. D. 1912, before me, the undersigned, a Notary Public in and for the District of Alaska, personally appeared JOHN JACKSON, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that the same was his free and voluntary act and deed for the uses and purposes therein expressed.

WITNESS my hand and official seal the day and year last in this certificate above written.

[Notarial Seal] SIMON HELLENTHAL.

Notary Public for Alaska. [197]

Plaintiff's Exhibit "H-1."

(Received in evidence Apr. 16, 1915.)

District of Alaska,
Juneau Recording District,—ss.

The within instrument was filed for record at 6 o'clock P. M. Aug. 23, 1895, and duly recording in book 11, on page 20 of the records of said District.

H. W. MELLEN,
District Recorder.

**NOTICE OF LOCATION OF QUARTZ CLAIM.
GENERAL GRANT.**

NOTICE IS HEREBY GIVEN to all to whom it may concern that James McCloskey and Angus McDonald, citizens of the United States, over the age of twenty-one years, having discovered a vein or lode of quartz or rock in place, bearing gold within the

limits of the claim hereby located, have this day, under and in accordance with the Revised Statutes of the United States, Chapter VI, Title 32, located fifteen hundred (1500) linear feet of this vein or lode, with surface ground six hundred feet in width, situated in Harris Mining District, District of Alaska, and known as the General Grant Quartz Mining Claim, and more particularly described as follows, to wit: Fifteen hundred feet of said lode claim so lying and being east of the discovery stake and notice. Said lode claim being situated on the North shore of Gastineau Channel, East of the Town of Juneau Alaska, about 1600 feet east of the wharf at said Town of Juneau known as Carroll's Old Wharf. The said General Grant Lode Claim is bounded on the west end thereof by the Abe Lincoln Lode; all corners of said claim are distinctly marked and established on [198] the ground by monuments of stone on the beach and by trees, and stumps on the north side of said claim. The exterior boundaries of this claim being distinctly marked by reference to some natural object or permanent monument above designated. And we intend to hold and work said claim as provided by the local customs and rules of miners and the Mining Statutes of the United States. Dated on the ground the 1st of August, 1895. Discovered July 15, 1895.

JAMES McLOSKEY, and
ANGUS McDONALD,

Locators.

United States of America,
Territory of Alaska,
Juneau Precinct,—ss.

I DO HEREBY CERTIFY that the foregoing is a true and correct copy of the original records as taken from Book 11 of Lodes on page 26, of the records of the Juneau Recording Precinct, Alaska, and the whole thereof.

Dated this 16th day of April, 1915.

JOHN B. MARSHALL,
U. S. Commisisoner and Ex-officio District Recorder.
[199]

Alaska Juneau Company's Exhibit "K-1."

(Received in evidence Apr. 17, 1915.)

NOTICE OF AMENDED LOCATION.

NOTICE IS HEREBY GIVEN, that the undersigned, having complied with the requirement of Chapter Six, Title Thirty-two of the Revised Statutes of the United States and the local customs, laws and regulations, has this day made an amended location of 0.58 acres on the "U" Millsite, situated in Harris Mining District, Territory of Alaska, and described as follows:

Beginning at Cor. No. 1 identical with Cor. No. 2, the west corner of the "A" millsite, thence S. 32 deg. 32½' W. 110 feet to Cor. No. 2; thence North 44 deg. 05' W. 228 feet to Cor. No. 3; thence North 32 deg. 32½' E. 110 feet to Cor. No. 4; thence S. 44 deg. 05' E. 228 feet to Cor. No. 1 the place of beginning. This claim lies on the shore of Gasitneau Channel at the S. E. end of the town of Juneau, bounded on the S. E.

by the "L" Millsite, on the N. E. by the "A" Millsite and on the S. W. by Gastineau Channel.

NOTICE IS ALSO GIVEN that this is an amended location, made for the purpose of more particularly describing the boundaries of the said "U" Millsite and correcting any errors in the original, which was made and notice of which was posted on the 3d day of February, 1913, and that none of the rights, benefits and privileges accruing under and by virtue of the said original location are in anywise forfeited or released in making this amended location.

Date of amended location Feb. 15th, 1913.

R. G. WAYLAND,
Locator.

Witnesses: G. J. JOHNSON.

Filed for record at 2:33 P. M., Feb. 15, 1913, and recorded in Book 11 Placers on page 135.

G. C. WINN,
District Recorder. [200]

United States of America,
Territory of Alaska,
Juneau Precinct,—ss.

I do hereby certify that the foregoing is a true and correct copy of the original location notice as taken from Book 11 of Placers on page 135, records of the Juneau Recording District, Alaska, and the whole thereof.

Dated at Juneau, Alaska, April 17th, 1915.

[Com. Seal] JOHN B. MARSHALL,
U. S. Commissioner and Ex-officio District Recorder.

Alaska Juneau Company's Exhibit "N-1."

(Received in evidence April 17, 1915.)

THIS INDENTURE, made this fifteenth day of February in the year of our Lord one thousand nine hundred and thirteen, between R. G. Wayland, the party of the first part, and the Alaska Juneau Gold Mining Company, the party of the second part;

WITNESSETH, That the said party of the first part, for and in consideration of the sum of One and no/100 Dollars, coin of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release and forever quitclaim unto the said party of the second part, and to its successors and assigns, the following described tract, lot or parcel of land, situated, lying and being in Harris Mining District, Territory of Alaska, particularly bounded and described as follows, to wit:

That certain mining claim known as the "U" mill-site and described as follows:

Beginning at Cor. No. 1, identical with Cor. No. 2, the west corner of "A" millsite, thence S. 32 deg. 32½' W. 110 feet to Cor. No. 2, thence N. 44 deg. 05' W. 228 feet to Cor. No. 3, thence N. 32 deg. 32½' E. 110 feet to Cor. No. 4, thence S. 44 deg. 05' E. 228 feet to the place of beginning; bounded on the S.E. by the "L" millsite, on the N.E. by the "A" millsite and on the S.W. by the Gastineau Channel.

Together with and all singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and

reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold, all and singular, the said premises, together with the appurtenances, unto said party of the second part, and its successors and assigns, forever. [202]

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

R. G. WAYLAND. (Seal)

Signed, sealed and delivered in presence of:

G. J. JOHNSON,

R. G. DATSON.

Territory of Alaska,

U. S. A.,—ss.

THIS IS TO CERTIFY, that on this 15th day of February, A. D. 1913, before me, James Christoe, notary public in and for the District of Alaska, duly commissioned and sworn, personally came R. G. Wayland, to me known to be the individual described in and who executed the within instrument and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes herein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.

[Notary Seal]

JAMES CHRISTOE,

Notary Public in and for the District of Alaska, residing at Treadwell.

Filed for record at 11:10 A. M., September 9, 1913,
and recorded in Book 24 of Deeds, page 142.

JOHN B. MARSHALL,
District Recorder.

United States of America,
Territory of Alaska,
Juneau Precinct,—ss.

I hereby certify that the foregoing is a true and correct copy of the original records as taken from Book 24 of Deeds, on page 142, of the records of the Juneau Recording Precinct, Alaska, and the whole thereof.

Dated Juneau, Alaska, April 17, 1915.

[Seal] J. B. MARSHALL,
United States Commissioner, Ex-officio Recorder.
[203]

[Order Settling and Allowing Bill of Exceptions.]

The foregoing Bill of Exceptions having been examined by me and found to conform to the truth and to contain all the evidence adduced and all the proceedings had upon the trial of the above-entitled cause, it is hereby settled and allowed as such and ordered filed as the Bill of Exceptions herein.

Done in open court this 14th day of August, 1915.

ROBERT W. JENNINGS,
District Judge.

Filed in the District Court, District of Alaska,
First Division. Aug. 14, 1915. J. W. Bell, Clerk.
By —————, Deputy. [204]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1020-A.

ALASKA JUNEAU GOLD MINING COMPANY,
a Corporation.

Plaintiff,

vs.

WORTHEN LUMBER MILLS, a Corporation,
Defendant.

Assignment of Errors.

Comes now the above-named defendant Worthen Lumber Mills, a corporation, the appellant herein, and files the following assignment of errors upon which it will rely in the prosecution of its appeal in the above-entitled cause:

I.

The Court erred in not making a finding of fact as follows, to wit:

That at the time of the commencement of this action, for several years prior thereto, defendant was and ever since has been in sole and exclusive possession and occupancy of that certain strip of ground below mean high tide, on the northeasterly shore of Gastineau Channel, and adjoining the seaward side of Franklin Street, in the town of Juneau, Alaska; said premises being a strip of ground sixteen (16) feet wide and four hundred (400) feet long, extending from a point on the southwesterly side of said Franklin Street 1555.8 feet in a southeasterly direction from corner No. 1 of the townsite of Juneau;

thence in a southeasterly direction along and adjoining the southwesterly side of Franklin Street, a distance of 400 feet. [205]

II.

The Court erred in not making a finding of fact as follows, to wit:

That Franklin Street, in the town of Juneau, Alaska, is public thoroughfare constructed, established, and maintained as such by the municipal corporation of the town of Juneau, Alaska, and that in its entire width, which is twenty (20) feet, it is below the line of mean high tide of Gastineau Channel, for the length of four hundred (400) feet immediately above the premises or strip of ground heretofore described and in the possession and occupancy of defendant.

III.

The Court erred in not making a finding of fact as follows, to wit:

That the premises above line of mean high tide, directly across the said street or thoroughfare, known as Franklin Street, from the aforesaid premises occupied by and in the possession of defendant, are held, claimed and occupied by plaintiff corporation by means of certain unpatented millsite locations for which said plaintiff corporation is at present applying for patent from the United States.

IV.

The Court erred in not making a finding of fact as follows, to wit:

That immediately below and to the seaward of the said premises, heretofore described as occupied by

and in the possession of defendant, are the navigable waters of Gastineau Channel, which latter, for several years last past has been and is now being used by the defendant for towing and floating saw logs to a certain sawmill plant owned and operated by defendant on the premises immediately to the northwest of the said strip of ground sixteen feet by four hundred feet above described.

V.

The Court erred in not making a finding of fact as follows, to wit: [206]

That in case plaintiff should erect a wharf over the navigable waters of Gastineau Channel, in front of and to the seaward of said strip of ground sixteen (16) feet by four hundred (400) feet above described, to the deep waters of said channel, where ocean-going vessels may land and discharge cargoes, the said sawmill plant belonging to defendant on the adjoining premises will be greatly depreciated in value and rendered useless for sawmill purposes, by reason of the obstruction of the natural channel for the towing of logs to said sawmill plant, and the defendant will thereby be irreparably injured in its rights.

VI.

The Court erred in not making a finding of fact as follows, to wit:

That plaintiff is the owner of more than 8000 feet of waterfront on the northeasterly shore of Gastineau Channel, commencing at approximately 1000 feet to the northwest of the premises here in question, and extending approximately 7000 feet along line of mean high tide of Gastineau Channel about 7000

feet, in a southeasterly direction.

VII.

The Court erred in not making a finding of fact as follows, to wit:

That plaintiff intends to wash and sluice debris and tailings into the waters of Gastineau Channel, on the seaward side of said Franklin Street, in the town of Juneau, immediately underneath and to the seaward of the said tract sixteen (16) feet by four hundred (400) feet, occupied by defendant as aforesaid, and to that extent obstruct navigation in front of said premises; and also desires to erect a wharf in front of said premises and over the navigable waters of said Gastineau Channel to deep water where ocean-going vessels can discharge cargo; but that the said plaintiff corporation has received no permit from the Secretary of War to deposit such debris [207] or tailings into the said waters of Gastineau Channel, or to erect any such wharf over said waters.

VIII.

The Court erred in making and filing the finding of fact, as follows, to wit:

That on the 23d day of August, 1911, plaintiff became and at all times since has been the owner and in possession and entitled to the possession of those two mining claims situated on Gastineau Channel, a navigable arm of the North Pacific Ocean, near the city of Juneau, known as the Abe Lincoln and General Grant. Said claims were and are the upland upon which abuts the tide-land involved in this litigation.

IX.

The Court erred in making and filing the finding of fact, as follows, to wit:

That said tide-land is shoal water lying immediately between said upland and the navigable waters of Gastineau Channel.

X.

The Court erred in making and filing the finding of fact, as follows, to wit:

That the plaintiff did not consent to or give the city any right whatever to construct said road, but that the same was constructed without consulting the plaintiff; that the construction and maintenance of said street does not and never did interfere with any of the plaintiff's rights, and that it is so constructed that plaintiff can wharf out and have access to deep water notwithstanding said plank road.

XI.

The Court erred in not making and filing the following conclusion of law, to wit:

That plaintiff, by reason of being the owner of millsite [208] locations has no littoral or riparian right of access to navigable water.

XII.

The Court erred in not making and filing the following conclusion of law, to wit:

That plaintiff, by reason of being the upland owner, has no riparian right or littoral right to any of the shore of Gastineau Channel below Franklin Street, at the point where the said Franklin Street runs on or below the line of mean high tide.

XIII.

The Court erred in not making and filing the following conclusion of law, to wit:

That plaintiff corporation has no right separate and apart from the public right to wharf out from the lower side of Franklin Street opposite the premises in controversy in this cause.

XIV.

The Court erred in not making and filing the following conclusion of law, to wit:

That plaintiff has no authority to deposit debris or erect a wharf in or over the waters of Gastineau Channel below mean high tide.

XV.

The Court erred in not making and filing the following conclusion of law, to wit:

That plaintiff has not suffered, nor is suffering, nor will suffer any special and peculiar injury different from the injury suffered or sustained by the public generally, by reason of the defendant's possession and occupancy of the strip of ground sixteen (16) feet wide by four hundred (400) feet long, adjoining the lower and seaward side of Franklin Street in front of the premises here in controversy. [209]

XVI.

The Court erred in not making and filing the following conclusion of law, to wit:

That plaintiff corporation is not entitled to the relief prayed for in the complaint nor any relief at all.

XVII.

The Court erred in making and filing the following

conclusion of law, to wit:

That the plaintiff is and was at the time of the commencement of this suit, and of the doing and threatening to do the things mentioned in the complaint, the owner, in possession and entitled to the possession, of the upland lying along the shore of Gastineau Channel between the southerly end of the Jorgenson reservation to the fish-house, situate approximately 400 feet to the south of the southerly end of said Jorgenson reservation.

XVIII.

The Court erred in making and filing the following conclusion of law, to wit:

That the plaintiff as the owner of the uplands above referred to, is entitled to all the littoral rights attached to uplands abutting on a navigable highway, and more particularly to the right of access over said tide-lands to the navigable waters of Gastineau Channel, and the right to construct a wharf as an aid to the exercise of the said right of access.

XIX.

The Court erred in making and filing the following conclusion of law, to wit:

That plaintiff is entitled to a decree of this Court enjoining the defendant from constructing, continuing or maintaining on the tide-land in question any structure of any nature or description which in any ways cuts off, obstructs or intereferes with the said free and uninterrupted access and the building of said wharf. [210]

XX.

The Court erred in entering a decree against the defendant.

WHEREFORE, the defendant above named, the appellant, prays that the judgment herein be reversed.

JOHN RUSTGARD,

Attorney for Defendant and Appellant. [211]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1020-A.

ALASKA JUNEAU GOLD MINING COMPANY,
a Corporation,

Plaintiff,

vs.

WORTHEN LUMBER MILLS, a Corporation,
Defendant.

**Petition for Appeal, Order Allowing Same and
Fixing Amount of Bond for Costs.**

Worthen Lumber Mills, a corporation, defendant above named in the above-entitled cause, feeling itself aggrieved by the decision, decree and judgment given and entered herein in favor of plaintiff and against this defendant on the 27th day of July, 1915, hereby appeals from said decree and judgment to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that said appeal be allowed, and that the Court make an order fixing the amount of

security to be given on said appeal.

JOHN RUSTGARD,
Attorney for defendant and appellant.

Order.

Now on this 14th day of August, 1915, the foregoing appeal is hereby allowed, the defendant to give a bond in the sum of \$250.00, conditioned according to law and to be approved by this Court.

Done in open court this 14th day of August, 1915.

ROBERT N. JENNINGS,
District Judge. [212]

Copy of the Within Assignment of Errors, Petition Received and Due Service of Same for Appeal, Order Allowing Same and Fixing Amount of Bond for Costs Acknowledged this 14th Day of August, 1915.

HELLENTHAL & HELLENTHAL,
By R. E. PENGLASE,
Attorney for Plaintiff and Appellee.

[Endorsed]: Original No. 1020-A. In the District Court Division No. 1, Territory of Alaska, Alaska Juneau Gold Mining Company, a Corporation, Plaintiff vs. Worthen Lumber Mills, a Corporation, Defendant. Assignment of Errors. Petition for Appeal, Order Allowing Same and Fixing Amount of Bond for Costs. John Rustgard, Attorney for Defendant and Appellant. Filed in the District Court, District of Alaska, First Division, Aug. 14, 1915, J. W. Bell. By —————, Deputy. [213]

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1020-A.

ALASKA JUNEAU GOLD MINING COMPANY,
a Corporation,

Plaintiff,

vs.

WORTHEN LUMBER MILLS, a Corporation,
Defendant.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That we, Worthen Lumber Mills, a corporation, as principal, and H. S. Worthen and Earle E. Smith, as sureties, are held and firmly bound unto the Alaska Juneau Gold Mining Company, a corporation, the plaintiff above named, in the sum of Two Hundred Fifty Dollars (\$250.00), to be paid to said plaintiff, its successors or assigns, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally and our and each of our successors, executors, administrators and assigns, firmly by these presents.

Sealed with our seals and dated this 14th day of August, 1915.

The condition of this obligation is such that,

WHEREAS, the above-named defendant Worthen Lumber Mills has taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse a judgment and decree made an en-

tered by the United States District Court of the District of Alaska, Division Number One thereof, at Juneau, on the 27th day of July, 1915, against the said defendant and in favor of said plaintiff;

NOW, THEREFORE, the condition of this obligation is such that if the above-named defendant shall prosecute said appeal to [214] effect and answer all costs, if he fail to make good his plea, then this obligation to be void; otherwise, to remain in full force and virtue.

WORTHEN LUMBER MILLS.

By H. S. WORTHEN, (Seal)
President.

H. S. WORTHEN (Seal)
EARLE E. SMITH (Seal)

United States of America,
District of Alaska,—ss.

H. S. Worthen and Earle E. Smith, being duly sworn, each for himself deposes and says:

That he is one of the sureties who signed the foregoing Bond on Appeal; that he is worth more than the sum of \$250.00, over and above all his debts and liabilities and exclusive of property exempt from execution; that he is not a counsellor, attorney at law, marshal, deputy marshal, commissioner, clerk of any court or other officer of any court, and that he is a resident within the District of Alaska, Division Number One thereof.

H. S. WORTHEN.
EARLE E. SMITH.

Subscribed and sworn to before me this —— day of August, 1915.

[Seal]

JOHN RUSTGARD,

Notary Public in and for Alaska.

My commission expires September 14, 1918.

The foregoing Bond is hereby approved in open court this 14th day of August, 1915.

ROBERT W. JENNINGS,

District Judge. [215]

Copy of within bond on appeal received and due service of same acknowledged this 14th day of August, 1915,

HELLENTHAL & HELLENTHAL,

R. E. PENGLASE,

Attorney for Plaintiff and Appellee.

Original No. 1020-A. In the District Court Division No. 1, Territory of Alaska, Alaska Juneau Gold Mining Company, a Corporation, Plaintiff vs. Worthen Lumber Mills, a Corporation, Defendant. Bond on Appeal. John Rustgard, Attorney for Defendant and Appellant. Filed in the District Court, District of Alaska, First Division, Aug. 14, 1915. J. W. Bell, Clerk. By —— Deputy. [216]

*In the United States Circuit Court of Appeals, for
the Ninth Circuit.*

WORTHEN LUMBER MILLS, a Corporation,
Appellant,

vs.

ALASKA JUNEAU GOLD MINING COMPANY,
a Corporation,

Appellee.

Citation.

United States of America,—ss.

The President of the United States, to Alaska Juneau Gold Mining Company, a Corporation, Appellee, and Hellenthal and Hellenthal, Esquires, Its Attorneys, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the City of San Francisco, State of California, on the tenth day of September, 1915, pursuant to an order allowing an appeal, entered in the clerk's office of the District Court of the District of Alaska, Division Number One thereof at Juneau, in that certain action No. 1020-A, in which Alaska Juneau Gold Mining Company, a corporation, is plaintiff and appellee, and Worthen Lumber Mills, a corporation, is defendant and appellant, to show cause, if any there be, why the decree and judgment rendered against the said appellant, as in said order allowing the appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable ROBERT W. JENNINGS, Judge of the United States District Court in and for the District of Alaska, Division Number One, this 14th day of August, 1915.

ROBERT W. JENNINGS,
Judge of the United States District Court, District of Alaska, Division Number One.

Attest: J. W. BELL,
Clerk of Said Court. [217]

Copy of within citation received and due service of same acknowledged this 14th day of August, 1915.

HELLENTHAL & HELLENTHAL,

By R. E. PENGLASE,

Attorney for Appellee. [218]

[Endorsed]: In the United States Circuit Court of Appeals for the Ninth Circuit. Worthen Lumber Mills, a Corporation, Appellant, vs. Alaska Juneau Gold Mining Company, a Corporation, Appellee. Citation. Filed in the District Court, District of Alaska, First Division. Aug. 14, 1915. J. W. Bell, Clerk, By ————— Deputy.

*In the District Court for the Territory of Alaska,
Division Number One, at Juneau.*

No. 1020-A.

ALASKA JUNEAU GOLD MINING COMPANY,
a Corporation,

Plaintiff,

vs.

WORTHEN LUMBER MILLS, a Corporation,
Defendant.

Praecipe [for Transcript of Record].

To the Clerk of the Above-entitled Court:

You will please certify to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, the following records in the above-entitled cause, to wit:

Complaint.

Answer.

Reply.

Findings of Facts and Conclusions of Law.

Decree.

Opinion of the Court.

Bill of Exceptions.

Assignment of Errors,

Petition for Appeal.

Order Allowing Appeal.

Bond on Appeal, and

Citation.

Dated at Juneau, Alaska, this 14th day of August, 1915.

JOHN RUSTGARD,

Attorney for Defendant and Appellant. [219]

Copy of within Praecipe received and due service of same acknowledged this 14th day of August, 1915.

HELLENTHAL & HELLENTHAL,

By R. E. PENGLASE,

Attorney for Plaintiff and Appellee. [220]

[Endorsed]: No. 1020-A. In the District Court, Division No. 1, Territory of Alaska. Alaska Juneau Gold Mining Company, a Corporation, Plaintiff, vs. Worthen Lumber Mills, a Corporation, Defendant. Praecipe. Filed in the District Court, District of Alaska, First Division. Aug. 14, 1915. J. W. Bell, Clerk. By —————, Deputy.

*In the District Court for the District of Alaska,
Division No. 1, at Juneau.*

United States of America,
District of Alaska,
Division No. 1,—ss.

**Certificate [of Clerk U. S. District Court to
Transcript of Record].**

I, J. W. Bell, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached 220 pages of typewritten matter and exhibits, numbered from 1 to 220, both inclusive, constitute a full, true, and complete copy, and the whole thereof, prepared in accordance with the praecipe of Plaintiff in Error, on file in my office and made a part hereof; in cause No. 1020-A, wherein the Worthen Lumber Mills, a Corporation is Plaintiff in Error and the Alaska Juneau Gold Mining Company, a corporation, is Defendant in Error.

I further certify that the said record is by virtue of a Citation issued in this Cause, and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate amounting to One Hundred Twenty-one 85/100 Dollars, (\$121.85), has been paid to me by plaintiff in error.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the above-entitled Court this 17th day of August, 1915.

[Seal]

J. W. BELL,
Clerk.

By _____,
Deputy.

[Endorsed]: No. 2640. United States Circuit Court of Appeals for the Ninth Circuit, Worthen Lumber Mills, a Corporation, Appellant, vs. Alaska Juneau Gold Mining Company, a Corporation, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Division No. 1.

Filed August 24, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

